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A LEGISLATIVE HISTORY OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99–499)

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

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CHAPTER III

H.R. 2817

[From the Congressional Record, permanent edition, June 20, 1985, pp. 16573-16575]

SUPERFUND REAUTHORIZATION LEGISLATION

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from New York [Mr. LENT] is recognized for 5 minutes.

● Mr. LENT. Mr. Speaker, today I am joining my colleagues in cosponsoring tough, new Superfund reauthorization legislation. I am proud of the bipartisan document we have put together. It provides the solid foundation we need to move forward with reauthorization before the September 30 deadline. It provides $10 billion for cleanup over the next 5 years. It provides tougher cleanup standards that will protect public health and the environment at every site with existing environment laws serving as our guideline. It provides for an achievable mandatory cleanup schedule against which EPA's progress can be measured. And—this is very important—it makes much needed structural reforms in a program that has been more like a full employment act for lawyers than an environmental cleanup program. It is in every way a tougher, expanded, and more workable Superfund program. In no way does it signal a retreat on this most critical of environmental problems.

I am especially proud of a key, groundbreaking structural reform that will encourage responsible parties to come forward and take responsibility for cleaning up the toxic waste sites they helped create. In this bill, we have provided the EPA Administrator with additional authority to expedite settlements—to create "a settlement window" if you will—so that responsible parties will no longer "hide in the weeds" and avoid their responsibility to safeguard the public health and safety.

Our bill also provides for a quick and effective response to remedy leaking gasoline and petroleum tanks by creating an adequate pool of money to respond to petroleum tank leaks without encumbering such responses with an unmanageable and untimely Superfund scheme of authorities. It also provides that EPA can then recover costs against responsible parties—owners and operators—and makes sure that gasoline station dealers will be able to get the petroleum tank leak insurance they must have to stay in business.

Finally, on community right to know, a provision of importance to my Long Island constituents, we have provided for the provision of vital information to States and localities—local fire and police—so they can better respond to potential dangers in the community. Under our bill, they will have the extensive information they need about the risks imposed by certain chemicals without confusing the public or unduly burdening small business.

We have a bill that will take the toxic waste cleanup effort out of the courtrooms of America and to the abandoned waste sites where it belongs. I look forward to quick action by the subcommittee next week and the full Energy and Commerce Committee shortly after the July 4 recess. Superfund reauthorization cannot wait. We must have a new, tougher law on the books before September 30 so we can begin the huge cleanup task before us. I am ready and eager to work with my colleagues in this important endeavor.●

● Mr. BROYHILL. Mr. Speaker, I am pleased to join with my colleagues from the Committee on Energy and Commerce in introducing the Superfund Amendments of 1985. This bill will expand and strengthen our Nation's program to clean up dangerous hazardous waste dump sites. Most importantly, it will redirect the Superfund Program out of the courtroom and back to the wastesites.

This bill represents a compromise reached by the cosponsors after several weeks of work. As a compromise, every provision is not going to be exactly to every member's liking. Overall, however, we have developed a package which should garner strong bipartisan support.

I would like to briefly highlight some of the key components of this bill. It contains a strict but reasonable schedule for the cleanup of sites on the national priority list. It prescribes reasoned, flexible standards to guide EPA in determining the degree of cleanup necessary to protect public health and the environment. The bill will address the problem of wastes at federal facilities and also protects cleanup contractors from undue liability. The legislation requires the Federal Government to perform health assessments at Superfund sites, and establishes a comprehensive, Federal community right to know and emergency response program. Most importantly, this bill will encourage responsible parties to come forward and reach settlements with EPA so that cleanup can commence. This program has become completely bogged down in lawsuits as companies deny their liability for fear of being forced to pay for the entire cleanup.

Mr. Speaker, as I mentioned earlier, the bill in not perfect. I am quite concerned that the $10 million authorization over 5 years represents more money than EPA can effectively use. I feel the evidence indicates that a $5 to $7 million fund would be adequate. I am pleased, however, that the bill contains a provision that I advanced which would stop the collection of Superfund taxes beyond levels needed to effectively and efficiently cleanup hazardous waste sites.

Overall, Mr. Speaker, this is a sound bill which deserves the immediate attention of the Congress since authority for the vital Superfund Program will expire on September 30 of this year.●

● Mr. RITTER. Mr. Speaker, I am pleased to join today with my colleagues as part of this bipartisan effort to reauthorize Superfund, which expires at the end of September. I am glad that we have finally come to this point in the process of reauthorization of the Superfund Program and have introduced what I believe is a fine bipartisan effort. Having worked with many of my colleagues in last year's efforts to come up with a responsible, bipartisan bill, I commend my fellow Members for moving forward once again on the reauthorization of this important program in a bipartisan manner.

The cleanup of our Nation's hazardous waste sites is of clear public concern, and I believe that this new, bipartisan bill will facilitate a strong cleanup program. It is for that reason that I am lending my name as an original cosponsor of this legislation. The major strength of this legislation is that it presents a realistic and practical approach to the toxic waste problem that is plaguing our Nation. The bill includes aggressive yet ultimately manageable cleanup standards and schedules and encourages settlements so that cleanup will be expedited.

I believe one of the most important features of this bill is that it provides the Administrator of EPA with the authority to order or take corrective action in the event of a release from a leaking underground storage tank. By establishing a separate fund for the cleanup of contamination resulting from leaking underground storage tanks, we are completing a process begun last year when a regulatory program was established for underground storage tanks under the Resource Conservation and Recovery Act [RCRA]. In my district in Pennsylvania's Lehigh Valley, we have experienced first hand the problems caused by leaking tanks, and I believe this bill will provide the most effective response to address this national problem.

The bill also contains extensive provisions that will ensure the assessment of public health risks at all Superfund sites. Key to the bill are liability and settlement provisions that will encourage private party cleanup and reduce needless litigation that actually inhibits cleanup.

Although I believe the bill still has room for improvement, it represents a significant step in enacting needed legislation to address the serious problem of toxic waste dumps. I look forward to working with my colleagues in improving this legislation, and I look forward to its expeditious consideration in the Subcommittee on Commerce, Transportation, and Tourism.●

● Mr. COATS. Mr. Speaker, earlier today, a bipartisan coalition of Members agreed to a consensus package as the markup vehicle for reauthorizing the soon-to-expire Superfund Program.

The coalition of Members and staff are to be commended for their diligent efforts to come to the table with a measure that has such widespread support. While the proposal is not a perfect measure, it goes a long way toward achieving our goal of cleaning up hazardous waste sites in this country.

We have a serious problem. We all recognize that there has not, been enough action taken to address the cleanup of hazardous waste in the past. But the consensus proposal we now have before us will not only reauthorize the current program but will considerably expand and accentuate the program. We don't have all the answers and cannot eliminate all of the hazardous waste problems in the short term, but we can and should move ahead as fast as is reasonably possible.

It is most important that the private sector and the States are encouraged to participate in the cleanup program. It is also important that the bill we report has an achievable scope, maintains a workable cleanup schedule, and retains flexibility in the administration of the program. While there are sections of the consensus package that give me some concern, I recognize the importance of attempting to achieve that delicate balance necessary for enactment of this important legislation.

In the past we have found ourselves in a politically divisive process that results in no real progress in addressing this critical national problem. The consensus building that has gone into the measure we introduced today provides a compromise for reauthorizing Superfund. It is incumbent upon each and every Member to work together to assure that we report a bill that will actually bring about meaningful, effective and efficient cleanup of our Nation's abandoned hazardous waste sites. For that reason, I trust the Congress will renew the Superfund Program in an expeditious manner.●

● Mr. FIELDS. Mr. Speaker, I recently joined a bipartisan group of my Energy and Commerce Committee colleagues in cosponsoring legislation to reauthorize the Superfund hazardous waste site cleanup program. The legislation was introduced in the House today by Mr. ECKART and Mr. LENT.

Earlier in the day, those of us serving on the Commerce, Transportation and Tourism Subcommittee selected the same legislation as our markup vehicle for the Superfund Program by a 13 to 5 vote.

I have some reservations about the Eckart-Lent version of the bill, including the provision in the bill calling for a $10 billion funding level—which is more than the EPA has said it can effectively spend: including the bill's failure to go far enough in encouraging private parties to settle with EPA on cleanup plans and avoid litigation; and including the bill's overly broad scope.

But overall, Mr. Speaker, this bill represents a reasonable compromise. It is a compromise which a majority of the members of the subcommittee, full committee and full House can—and should—enthusiastically support.

While the Eckart-Lent bill is more all-encompassing then I believe is desirable, it nonetheless properly emphasizes the cleanup of abandoned hazardous waste sites as the primary goal of the Supefund Program. Other versions of Superfund legislation are so expansive that EPA would have been forced to divert its attention from the cleanup of hazardous waste sites to other less serious problems.

The Eckert-Lent bill takes some major steps toward increasing voluntary settlement among responsible parties—rather than time-consuming and expensive litigation. It does so by providing the EPA with discretionary authority to provide final releases from liability if the cleanup meets certain criteria and by codifying settlement procedures which gives responsible parties the assurance that set guidelines will be followed in the settlement procedure.

Mr. Speaker, my own strong support for the Superfund Program stems from the fact that my Eighth Congressional District of Texas contains three abandoned hazardous waste dump sites on the EPA's Superfund national priority cleanup list.

Any new Superfund legislation must expand the types of industries paying Superfund cleanup taxes. And this bill does.

My State of Texas pays almost 60 percent of the current petrochemical feedstock tax. My district alone pays 9 percent of the total feedstocks tax. I want to ensure that our petrochemical industries—which employ 74,000 persons in my district directly and indirectly—are not taxed out of competition with foreign petrochemical importers.

We need a clean environment and I am committed to that goal. But I'm also committed to protect the jobs of Houston-area workers.

While the Eckart-Lent bill mandates the same general level of cleanup required in other Federal environmental laws, it does not limit the EPA's flexibility in selecting remedies which are appropriate for widely divergent sites with widely divergent problems.

The legislation I've cosponsored requires the EPA to begin remedial investigation/feasibility studies under an established schedule and puts the heat on the EPA to accelerate cleanups. But the legislation recognizes that some Superfund sites are more complex than average and might not be able to meet rigid cleanup schedules. Also, this bill ensures that citizens and local health and safety officials will have access to vital health information from nearby companies which produce or utilize potentially hazardous chemicals—but does so in a way which is reasonable and not overly burdensome for the companies.

Mr. Speaker, the Eckart-Lent bill is a good one. It will bring about the cleaner environment we all support. And it will achieve that goal without costing hundreds of thousands of Americans their jobs nationwide. I urge my colleagues to support this worthy legislation.

Thank you Mr. Speaker.●

● **Mr. SCHAEFER.** Mr. Speaker, earlier today I joined a majority of members on the Commerce, Transportation and Tourism Subcommittee in introducing a Comprehensive Environmental Response, Compensation and Liability Act—Superfund—measure which provides a fair and equitable balance between the environmental and economic concerns that must be considered.

Like most measures of this magnitude, there was a certain amount of give and take that was necessary to pull together a majority of subcommittee members to support this bill. Although there are a number of provisions in the bill that I would prefer to see changed, this measure has many important provisions that I do support, and more importantly, it's a bill that can get through the House and ensure that come September 30, we are not left without effective Superfund legislation.

Mr. Speaker, a few years ago, it was the rare individual who could tell you what the word Superfund meant. Today, it can be defined by a large segment of our population. What has happened over the last few years that has turned it into a household word?

Basically, it's that the general public and Congress has concluded that there are hazardous waste sites in our country that have to be cleaned up, by the Government if need be, in order to protect the public health and the environment. That's what was responsible for the original Superfund bill becoming law just a few years after the issue was originally raised. And it will also be responsible, I'm certain, for the reauthorization of new Superfund legislation before the program expires on September 30.

Superfund legislation is very important to the people of my home State of Colorado. Currently there are nine sites listed on the national priorities list [NPL], including the Lowry landfill, which need to be cleaned up in a timely and efficient manner. There are a number of additional sites that will probably be added to that list in the coming months.

This bill establishes a mandatory cleanup schedule and provides incentives for accelerated private party cleanup through avoidance of wasteful and costly litigation that has slowed the cleanup effort. It strengthens the program's health related authorities as well as establishing requirements for listing Federal facilities on the NPL. The inclusion of Federal facilities will allow sites like the Rocky Mountain Arsenal to be included on the NPL which should further ensure a prompt and effective cleanup. These are just a few of the many other important improvements made to existing law.

As I previously indicated, there are some negatives to this proposal. Perhaps the most glaring to me is the funding level of $10 billion. The very able Administrator of the EPA, Mr. Thomas, does not beleive that the EPA can spend much more than $5 billion over the next 5 years to clean up the hazardous sites. Although the Administrator's numbers are disputed by some very reputable sources, I still believe that Mr. Thomas has the best idea of exactly what EPA is capable of doing over the next 5 years. Since I believe that we will see more and more technically qualified people and scientific developments expediting site cleanup in the coming years which will in turn require some additional funds, I believe that an increase above the Administrator's request is in order. However, I am not inclined to believe that we need to double the Administrator's request.

A scaled down funding level should also allow the Ways and Means Committee, which has jurisdiction over the taxing measures, to consider smaller and fewer taxing mechanisms than called for in this bill.

Even with these concerns, I believe that after taking a close look at this measure, many will come to the conclusion I did, that this is a fair and equitable measure deserving of your support.●

99TH CONGRESS
1ST SESSION

H. R. 2817

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1985

Mr. ECKART of Ohio (for himself, Mr. LENT, Mr. TAUZIN, Mr. RITTER, Mr. RALPH M. HALL, Mr. COATS, Mr. DOWDY of Mississippi, Mr. FIELDS, Mr. SLATTERY, Mr. SCHAEFER, Mr. DINGELL, and Mr. BROYHILL) introduced the following bill; which was divided and referred as follows: Titles I and II, except for section 206, to the Committees on Energy and Commerce and Public Works and Transportation; section 206 and title III to the Committee on Energy and Commerce; and title IV to the Committee on Ways and Means

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A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments of 1985".

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SEC. 2. CERCLA.

As used in this Act, the term "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO CERCLA DEFINITIONS.

(a) USE OF TERM "PRESIDENT".—

(1) ADMINISTRATOR.—CERCLA is amended by striking out "President" in each place such term appears and substituting "Administrator".

(2) DEFINITION.—Section 101(2) of CERCLA (defining the term "Administrator") is amended by inserting the following before the semicolon at the end thereof: ", except as provided in subsection (b)".

(3) DELEGATIONS OF AUTHORITY.—Section 101 of CERCLA is amended by inserting "(a) IN GENERAL.—" after "101." and by adding the following new subsection at the end thereof:

"(b) USE OF TERM 'ADMINISTRATOR'.—

"(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated by the President by executive order to any other department, agency, or instrumentality of the United States (or where any such authority has been retained by the President), the term 'Administrator' refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

"(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department agency or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term 'Administrator' when used in this Act refers to the Administrator of the Environmental Protection Agency.

"(3) ATSDR.—When used in section 116 of this Act, the term 'Administrator' means the Administrator of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmenal Protection Agency as specified in section 116.".

(b) RELEASE.—Section 101(22) of CERCLA is amended by inserting the following after the word "environment": "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutants or contaminants)".

(c) REMEDIAL ACTION.—Paragraph (24) of section 101 of CERCLA (relating to the definition of "remedy" or "remedial action") is amended by—

(1) striking out "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and substituting "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;"; and

(2) striking out "or" before "contaminated materials" and inserting "and associated" in lieu thereof.

(e) RESPONSE.—Section 101(25) of CERCLA is amended by striking out "and" and by inserting before the semicolon at the end thereof the following: ", and enforcement activities related thereto".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding the following new sentence at the end thereof: "The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" and substituting "subsection" and by adjusting the left hand margin of the text of such subsection following the words "102 of this title" so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) PUBLIC HEALTH THREATS.—Paragraph (1) of section 104(a) of CERCLA is amended by adding the following at the end thereof: "The Administrator shall give primary attention to those releases which he deems may present a public health threat.".

(b) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—Section 104(a)(1) of CERCLA is amended by striking out ", unless the President determines" and all that follows down through "party".

(c) REMOVAL ACTION.—Section 104(a) of CERCLA is amended by adding the following new paragraph after paragraph (2):

"(3) REMOVAL ACTION.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.".

(d) CROSS REFERENCE.—Section 104(a) of CERCLA is amended by inserting the following new paragraph after paragraph (3):

"(4) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—The Administrator is authorized to provide for response action by potentially responsible persons in accordance with section 122.".

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and substituting "$2,000,000" and "12 months" respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with remedial action to be taken".

(f) FACILITIES OWNED AND OPERATED BY STATES.—

(1) FACILITIES OWNED AND OPERATED BY STATES.—Section 104(c)(3)(C)(ii) of CERCLA is amended by inserting "and operated" after "owned".

(2) CROSS REFERENCE TO STATE CREDITS PROVISION.—Subsection (c)(3) of section 104 of CERCLA is amended by striking out "The President shall grant the State a credit" and all that follows down through the end of such paragraph and inserting in lieu thereof the following: "The Administrator shall grant the State a credit against the share of the costs for which it is

responsible under this paragraph in accordance with subsection (j)."

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this section in accordance with section 120 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by inserting the following new paragraph after paragraph (3) and by redesignating paragraph (4) as (5):

"(4) STATE CREDITS.—

"(A) CERTAIN OUT-OF-POCKET EXPENSES.—The Administrator shall treat the expenses described in this subsection as a credit against the share of the costs for which a State is responsible under paragraph (3). The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds.

"(B) BASIC CREDIT.—In the case of any facility listed on the National Priorities List under the National Contingency Plan, the credit shall include amounts expended by a State for remedial action at the facility if such amounts are expended pursuant to a contract or cooperative agreement with the Administrator.

"(C) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit shall include expenses for remedial action at a facility before the listing of the facility on the National Priorities List (NPL) or before a contract or cooperative agreement is entered into under subsection (d) for the facility. No such credit shall be allowed unless the Administrator determines that such expenses would have been credited to the State under subparagraph (B) had the expenditures been made after listing of the facility on the NPL after the date on which such contract or cooperative agreement was entered into.

"(D) ADMINISTRATIVE EXPENSES.—The credit shall include funds expended or obligated by the State or political subdivision for administration of provisions under this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

"(E) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(F) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this subsection.

"(G) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this subsection.

"(H) USE OF CREDITS.—Credits granted under this subsection may only be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions (and future maintenance thereof) at facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (5):

"(6) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—For the purposes of paragraph (3) of this subsection, in the case of ground water, surface water, or soil contamination, completed remedial action includes the completion of treatment or other measures in accordance with the remedial action plan. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered maintenance. Each contract or cooperative agreement under paragraph (3) shall provide that the State shall assure, or assure payment of the costs of, all long-term remedial action required after the date of the termination of the Hazardous Substances Superfund.".

(j) COOPERATIVE AGREEMENTS.—Paragraph (1) of section 104(d) of CERCLA is amended by adding the following at the end thereof: "A contract or cooperative agreement under this paragraph shall be subject to such terms as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities."

(k) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (8), by inserting "CONFIDENTIALITY OF INFORMATION" after "(8)", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a facility, establishment, place, or property. Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement is also authorized to take such action. Such authority may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at such facility, establishment, place, property, or location. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative referred to in paragraph (1) may require any person who has or may have information relevant to either of the following to furnish, upon reasonable notice, information or documents relating to such matter—

"(A) The identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall (i) grant any such officer, employee, or representative access at all reasonable times to the facility to inspect all documents or records relating to such matters, or (ii) copy and furnish to the officer, employee, or representative all such documents or records, at the option of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following—

"(A) Any establishment or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

"(B) Any establishment or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any establishment or other place or property where such release is or may be threatened.

"(D) Any establishment or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) Inspection and Samples.—

"(A) Authority.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any establishment or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) Samples.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of the any analysis is made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions—

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

"(7) CLEARANCE.—Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.".

(l) Repeal of Section 104(i).—Section 104(i) of CERCLA is repealed. For related provisions, see section 115 of this Act.

(m) Cleanup Schedules.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(i) Cleanup Schedules.—

"(1) Evaluation.—Within 3 years after the enactment of this subsection, or the date of placement on the Emergency Response and Remedial Investigation System (ERRIS) list, whichever is later, all facilities listed on ERRIS shall be evaluated, in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(2) Commencement of rifs.—The Administrator shall insure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule—

"(A) 150 of such facilities within 12 months after the date of enactment of this subsection.

"(B) 325 of such facilities within 24 months after such date of enactment.

"(C) An additional 200 facilities within each year thereafter.

"(3) COMMENCEMENT OF REMEDIAL ACTION.—Within 12 months after completion of Remedial Investigations and Feasibility Studies (RIFS), the Administrator shall ensure commencement of remedial action at no fewer than 90 percent of the facilities for which completed RIFS have determined that such remedial action is necessary.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) REVISION OF PLAN.—

(1) AMENDMENTS MADE BY THIS ACT.—Not later than 18 months after the enactment of this Act, the Administrator shall revise the National Contingency Plan (NCP) referred to in section 105 of CERCLA in order to reflect the amendments made by this Act.

(2) NEW REMEDIAL ACTIONS.—Any provision of the NCP adopted pursuant to any other provision of law which is inconsistent with the requirements of the amendments made by this Act shall not apply to reme-

dial actions undertaken, after the enactment of this Act, under CERCLA.

(3) HAZARD RANKING SYSTEM.—

(A) REVIEW OF HAZARD RANKING SYSTEM.—Not later than 12 months after the enactment of this Act and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the Administrator shall commence a proceeding to review the hazard ranking system in effect under the NCP. Such review shall assure, to the maximum extent feasible, that the hazard ranking system appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review.

(B) REEVALUATION NOT REQUIRED.—The Administrator shall not be required to reevaluate, after the enactment of this Act, the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of the CERCLA before such enactment and which was assigned a national priority under the National Contingency Plan.

(C) NEW INFORMATION.—Nothing in subparagraph (B) shall preclude the Administrator of the Environmental Protection Agency from taking new information into account in undertaking response actions under CERCLA.

(b) PRELIMINARY ASSESSMENT AND EVALUATION.—Section 105 of CERCLA is amended by inserting "(a) REVISION AND REPUBLICATION.—" after "105." and by adding the following new subsection at the end thereof:

"(b) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.".

(c) HAZARD RANKING SYSTEM.—Section 105(a)(8)(A) of CERCLA is amended by inserting the following after "ecosystems,": "the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(d) NATIONAL PRIORITY LIST.—Subparagraph (B) of section 105(a)(8) of CERCLA is amended as follows:

(1) Strike out "at least four hundred of" when it appears.

(2) Strike out "at least" following the word "facilities" the second time it appears.

(3) Insert "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

SEC. 106. ABATEMENT ACTIONS.

Section 106 of CERCLA is amended by adding the following new subsection after subsection (c):

"(d) PESTICIDES.—The Administrator shall not take action under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States).".

(b) COSTS AND DAMAGES.—Section 107(a)(4) of CERCLA is amended as follows—

(1) In subparagraph (A) add after "not inconsistent with the national contingency plan" the following: "and all costs incurred by the United States Government or a State under section 104(b)".

(2) Strike out "and" at the end of subparagraph (B), strike out the period at the end of subparagraph (C) and substitute a semicolon, and add the following at the end thereof:

"(D) the costs of any health effects assessment or study carried out under such section 116; and

"(E) all other costs incurred by the United States Government before the enactment of the Comprehensive Environmental Compensation and Liability Act of 1980 and subsequent to the enactment of the Resource

Conservation and Recovery Act of 1976, in response to a release or threatened release of a hazardous substance from a facility used for the storage, treatment, or disposal of hazardous substances, where such person knew or should have known of the response action and the costs are not inconsistent with the response actions provided for in subsections 101(23) and (24) of this Act.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (E). Such interest shall accrue from 90 days after the date on which the United States files an action for recovery of such amounts. The rate of interest on the outstanding unpaid balance of the amounts recoverable under paragraph (2) shall be the same rate as is applicable to investments of the Fund under section 223(b) of this Act. For purposes of applying section 223(b) in the case of interest on amounts recoverable under paragraph (2), the term 'comparable maturity' shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.".

(c) LIABILITY FOR EMERGENCY RESPONSE ACTIONS.—(1) Section 107(d) of CERCLA is amended by striking out "damages" in each place it appears and inserting in lieu thereof "costs and damages", and by inserting after the second sentence the following: "This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.".

(2) Such section 107(d) is further amended by inserting "(1) RENDERING CARE OR ADVICE.—" after "(d)" and adding the following new paragraph at the end thereof:

"(2) GOVERNMENTAL RESPONSE TO EMERGENCY.— No Federal, State, or local government agency shall be liable under this title for costs or damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a facility or site owned by another person. This paragraph shall not affect the liability of any Federal, State or local government agency for negligence.".

(d) NATURAL RESOURCES.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—The Administrator shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

"(B) STATE.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

"(3) FEDERAL FACILITIES.—With respect to Federal facilities, Federal agencies with custody and accountability for those facilities shall be the only trustees of natural resources on, under, or above those facilities for purposes of this Act.".

(e) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies see, section 119 of this Act."

(f) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding the following new subsection after subsection (j):

"(k) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954. This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, ~~in establishing~~ such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) Direct Action; Liability.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) Direct Action in Case of Bankruptcy, Etc.—In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or where with reasonable diligence jurisdiction in the Federal Courts cannot be obtained over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) Limitation of Guarantor Liability.—

"(1) Total liability.—The total liability under this Act of any guarantor for a facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) SECTION 103.—(1) Section 103(b)(3) of CERCLA is amended by striking out "$10,000 or imprisoned for not more than one year, or both" and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both".

(2) Section 103(b)(3) of CERCLA is amended by adding the following before the last sentence thereof: "Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.".

(3) Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more

than one year or both." and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.".

(b) Section 104.—Section 104(e)(2) of CERCLA is amended by adding the following at the end thereof:

"(E) Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.".

(c) Section 106.—Section 106(b) of CERCLA is amended by striking out "$5,000" and substituting "$25,000".

(d) Section 109.—Section 109 of CERCLA is amended by striking out "$10,000" and substituting "$25,000", by striking out the heading and substituting "Penalties", by inserting "(a) Failure to Comply with Section 108.—" after "109." and by adding the following at the end thereof—

"(b) False or Misleading Information.—

"(1) Criminal penalty.—Any person who submits in any notice required under section 103 any information which he knows to be false or misleading shall be imprisoned for not more than three years or fined in accordance with section 3571 of title 18 of the United States Code (or section 3623 of title 18 if applicable), or both.

"(2) CIVIL PENALTY.—Any person who submits in any notice required under section 103 any false or misleading information shall be subject to a civil penalty of not more than $25,000 for each day during which such violation continues unless such information is corrected within 30 days after the date of such submission.

"(c) ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.—Any civil penalty under this Act shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of such a penalty the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.".

(e) SECTION 112.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the

United States Code or imprisoned for not more than 3 years, or both".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting the following immediately after "(a)": "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Response Trust Fund established under section 221 not more than $1,750,000,000 for each of the 5 fiscal years commencing with October 1, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved).".

(b) USE OF FUND FOR GRANTS.—Section 111(a) of CERCLA is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and substituting "; and", and by adding the following new paragraph—at the end thereof—

"(5) the cost of grants under section 117(e) (relating to grants to citizens for technical assistance).".

(c) USES INCLUDED.—(1) Section 111(c) of CERCLA is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and substituting "; and", and by adding the following new paragraphs at the end thereof:

"(7) costs incurred by the Administrator in evaluating facilities pursuant to petitions under section 105(b); and

"(8) the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party or parties.

(2) Section 111(c)(4) of CERCLA is amended by striking out "epidemiologic studies" and substituting "epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(d) DEFINITION OF HEALTH ASSESSMENT.—Section 111(c) of CERCLA is amended by adding the following at the end thereof: "As used in paragraph (4), the term 'health assessment' shall have the meaning provided by section 116(f)(7).

(e) NATURAL RESOURCE DAMAGE CLAIMS.—Section 111 of CERCLA is amended as follows—

(1) In subsection (b) insert a period after "title" the first time that word appears and strike out all that follows.

(2) In subsection (c) strike out paragraphs (1) and (2).

(3) Strike out subsection (d).

(4) Strike out subsections (h) and (i).

(f) AMENDMENTS TO SECTION 111(e).—Section 111(e) of CERCLA is amended as follows—

(1) In paragraph (1) insert "pursuant to subsection 111(a)(2)" after the word "Fund" the first time it appears.

(2) In paragraph (2) insert "(A)" before "for the purposes" and insert the following before the period at the end thereof: "and (B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C)".

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following—

"(1) AUDIT.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this subtitle and an examination of remedial investigations and feasibility studies prepared for remedial actions.

"(2) STATUS REPORT.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(3) ESTIMATE.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate.

Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.".

"(m) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

"(A) For fiscal year 1986, $250,000,000.

"(B) For fiscal year 1987, $250,000,000.

"(C) For fiscal year 1988, $250,000,000.

"(D) For fiscal year 1989, $250,000,000.

"(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.".

(i) ATSDR.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (m):

"(n) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Trust Fund.".

SEC. 112. CLAIMS PROCEDURE.

Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUTE OF LIMITATION.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (f):

"(g) CONTRIBUTION.—

"(1) CONTRIBUTION.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the

Federal Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

"(2) SETTLEMENT.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

"(3) PERSONS NOT PARTIES TO SETTLEMENT.—Nothing in this subsection shall affect or modify in any way the rights of—

"(A) the United States,

"(B) a State, or

"(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,

to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2). Any contribution action brought under this subsection shall be governed by Federal law. In any such action under this subsection for contribution the rights of a State and person referred to in subparagraph (C) shall be subordinated to the rights of the United States.

"(h) STATUTE OF LIMITATIONS.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following—

"(A) The date of the discovery of the loss.

"(B) The date on which regulations are promulgated under section 301(c).

"(C) The date on which regulations are promulgated establishing procedures for the filing of claims for such damages under section 112.

"(2) ACTIONS FOR RECOVERY OF COSTS.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

Section 114(c) of CERCLA is amended to read as follows—

"(c) STATE FUNDS.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.".

SEC. 115. PUBLIC HEALTH ASSESSMENT AND PROTECTION AUTHORITIES.

Title I of CERCLA is amended by inserting the following new section after section 115:

"SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

"(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an Administrator, to be known as the Agency for Toxic Substances and Disease Registry (ATSDR). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

"(b) DUTIES.—The Administrator of the ATSDR shall, with the cooperation of—

"(1) the Administrator of the Environmental Protection Agency,

"(2) the Commissioner of the Food and Drug Administration, "(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

"(4) the Administrator of the Occupational Safety and Health Administration, and

"(5) the Administrator of the Social Security Administration,

effectuate and implement the health-related authorities of this Act.

"(c) LIST OF RESTRICTED AREAS.—In cooperation with the States and other agencies of the Federal Government, the Administrator of the ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances or pollutants or contaminants.

"(d) LIST OF SUBSTANCES.—

"(1) INITIAL 100.—The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR but within 6 months after enactment of this section, shall prepare a list of at least 100 hazardous substances or pollutants or contaminants which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priority List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

"(2) REVISION.—Within 24 months after the enactment of this section, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall revise the list prepared under paragraph (1). Such revision shall include the addition of 100 or more such hazardous substances or pollutants or contaminants. The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall not less often than once every year thereafter revise such list based upon new information concerning the potential for human exposure to hazardous substances, pollutants, or contaminants at locations specified in paragraph (1) and their known or suspected toxicity to humans.

"(e) INFORMATION ON HEALTH EFFECTS.—

"(1) LITERATURE, STUDIES, ETC.—The Administrator of ASTDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance or pollutant or contaminant listed pursuant to subsection (d).

"(2) TOXICOLOGICAL PROFILES.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances or pollutants or contaminants under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed jointly by the Administrator of the Environmental Protection Agency and the Administrator of ATSDR. Such profiles shall include, but not be limited to—

"(A) the examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance or pollutant or contaminant in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects; and

"(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

The profiles required to be conducted under this paragraph for those hazardous substances or pollutants or contaminants listed in paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within 4 years after the enactment of this section. Additional profiles required on substances listed pursuant to this paragraph shall be completed at a rate of no less than 25 per year. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(3) HEALTH EFFECTS RESEARCH.—For any hazardous substance or pollutant or contaminant for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance or pollutant or contaminant. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance or pollutant or contaminant in combination with other hazardous substances or pollutants or contaminants with which it is commonly found.

"(4) COORDINATION.—In the development and implementation of any research program under this subsection, the Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances or pollutants or contaminants listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of the Environmental Protection Agency and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(f) HEALTH ASSESSMENTS.—

"(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priority List (NPL) established under section 105 which meets each of the following criteria:

"(A) The presence of a hazardous substance or pollutant or contaminant has been confirmed at the facility.

"(B) Pathways of human exposure to hazardous substances or pollutants and contaminants have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances or pollutants or contaminants.

"(C) There exists a significant possibility that a human population has been exposed to hazardous substances or pollutants or contaminants through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed.

The determination of whether any facility on the NPL meets such criteria shall be based on information provided by the Administrator of the Environmental Protection Agency regarding such criteria. Nothing in this paragraph shall preclude the Administrator of the ATSDR from performing, where appropriate and consistent with the National Contingency Plan, health assessments of releases of hazardous substances or pollutants or contaminants for any other facilities, including facilities which are not listed on the NPL. The Administrator of the Environmental Protection Agency or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate the performance of health assessments under this section.

"(2) PETITION TO ADMINISTRATOR OF EPA.—Any individual or group of individuals may submit a petition to the Administrator to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator shall take action under paragraph (3)(A) if the Administrator determines that there is a reasonable likelihood that a hazardous substance is from one of the following facilities and that the exposure may present a significant risk to human health:

"(A) A facility where such substance is (or was in the past) treated, stored, recycled, or disposed of, on a regular basis.

"(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

"(3) INITIATION OR EXPLANATION REQUIRED.—Within 60 days (or as soon thereafter as possible) after receipt of a petition under paragraph (2), the Administrator of the Environmental Protection Agency (or the Administrator of the Agency for Toxic Substances and Disease Registry if designated by the Administrator of the Environmental Protection Agency) shall do one of the following:

"(A) Initiate a health assessment.

"(B) Publish a written explanation of a determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or a determination that the exposure does not present a significant risk to human health.

Each assessment under this paragraph shall be completed within 6 months after the date on which the petition is filed (or as soon thereafter as possible).

"(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances or pollutants or contaminants, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7).

"(5) RIFS.—Where a health assessment is done at an NPL site, the Administrator of the ATSDR shall, to the maximum extent practicable, complete health assessments before the completion of the remedial investigation and feasibility study at the facility concerned.

"(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment shall report the results of the assessment to the Administrator of ATSDR and the Administrator of the Environmental Protection Agency and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall include the same recommendation in any report on the results of any assessment carried out directly by the ATSDR, and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term 'health assessment' means a determination of the potential individual and population human health risks posed by individual facilities. A health assessment shall be based on but not limited to the following information:

"(A) The nature and extent of contamination.

"(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

"(C) The size and potential susceptibility of the community within the likely pathways of exposure.

"(D) The comparison of measured or estimated human exposure levels which are identified for hazardous substances or pollutants or contaminants and any exposure levels for such hazardous substances or pollutants or contaminants which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

"(E) The comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.

An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of the ATSDR shall utilize appropriate data available from the Administrator of the Environmental Protection Agency to avoid duplication of effort.

"(8) PURPOSE.—The purpose of such health assessments shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances or pollutants or contaminants at a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of such health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances or pollutants or contaminants including known point or nonpoint sources other than those from the facility in question.

"(9) RESULTS AND RECOMMENDATIONS.—At the completion of each health assessment the Administrator of ATSDR shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure.

"(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance or pollutant or contaminant from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

"(g) STUDIES.—

"(1) PILOT STUDIES.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(2) FULL SCALE.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects for the population exposed to hazardous substances or pollutants or contaminants in a release or suspected release.

"(h) REGISTRY.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

"(1) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances or pollutants or contaminants; or

"(2) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances or pollutants or contaminants.

"(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances or pollutants or contaminants based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(1) periodic medical testing of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(j) REPORT EVERY 2 YEARS.—Two years after the enactment of this subsection and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the

Administrator of the Environmental Protection Agency, the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works a report on the results of the Agency's activities regarding—

"(1) health assessments conducted;

"(2) epidemiologic studies conducted;

"(3) hazardous substances or pollutants or contaminants which have been listed under subsection (d), toxicological profiles which have been developed and toxicologic testing which has been conducted or which is being conducted under subsection (e);

"(4) registries established under subsection (h); and

"(5) an overall assessment, based on the results of activities conducted by the Administrator of the ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances or pollutants or contaminants due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(k) REDUCTION OF EXPOSURE.—

"(1) SIGNIFICANT HUMAN EXPOSURE LEVEL.—If a health assessment, other study, or evaluation carried out under this Act identifies an individual or individuals exposed to a hazardous substance or pollutant or contaminant in a manner which presents a significant risk to human health, the Administrator of the Environmental Protection Agency shall take such steps as may be necessary to abate this risk. Such steps may include the following:

"(A) Provision of alternate household water supplies.

(B) Temporary or permanent relocation of individuals.

"(2) INSUFFICIENT INFORMATION.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator of the Environmental Protection Agency to determine a significant human exposure level with respect to a hazardous substance or pollutant or contaminant, the Administrator of the Environmental Protection Agency may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance or pollutant or contaminant to such level as the Administrator of ATSDR deems necessary to protect the human health.

"(l) NO DELAY OF OTHER ACTION.—In the case of any hazardous substance or pollutant or contaminant which is subject to a petition under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator of the Environmental Protection Agency to exercise any authority vested in the Administrator of that Agency under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

"(m) PEER REVIEW.—All studies and results of research conducted under this section (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the ATSDR.

"(n) EDUCATIONAL MATERIALS.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances or pollutants or contaminants (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

"(o) DIRECT ACTION AND COOPERATIVE AGREEMENTS.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of the ATSDR established by subsection (a), either directly or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of the ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(p) ADEQUATE PERSONNEL.—The Administrator shall provide for the employment of an adequate number of officers and employees in the ATSDR, based upon the amount made available to such agency for each fiscal year and taking into account the recommendations of such agency.

"(q) FEDERAL FACILITIES.—In accordance with section 107(g), the Administrator of the ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

"(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of the ATSDR shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidmiological studies, or any other assistance appropriate under the circumstances. Nothing in this subsection shall be construed to create an entitlement program.".

SEC. 116. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate, shall—

"(1) publish a notice and brief analysis of the proposed plan and make such plan available to the public,

"(2) provide a reasonable opportunity for submission of written and oral comments regarding the proposed plan and regarding any waivers under section 121(relating to cleanup standards).

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan, if any remedial action is taken, if any enforcement action under section 106 is taken, or if any settlement or consent decree under section 106 is entered into and if such action, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

"(e) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.

"(f) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess data and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. Each grant recipient shall be required, as a condition of the grant, to contribute at least 1/5 of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 1/5 contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this paragraph with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 117. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

"(a) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following—

"(1) A release or threat of a release of a hazardous substance or polutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

"(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(3) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

"(4) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant in any form if he determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency. As used in this subsection, the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.

"(b) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

"(c) DETERMINATION TO USE OFFSITE REMEDIAL ACTION.—Whenever any remedial action is undertaken under section 104 (or any action is undertaken under section 106), in determining whether or not to utilize offsite transport and offsite storage, treatment, destruction, or secure disposition, the Administrator shall take each of the following into account—

"(1) The long-term uncertainties associated with land disposal.

"(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

"(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

"(4) Short- and long-term potential for adverse health effects from human exposure.

"(5) The long-term maintenance costs of alternative remedial actions.

"(6) The risks associated with excavation, transportation, and disposal.

"(d) Offsite Remedial Action.—In the case of any removal or remedial action involving the transfer of any hazardous substance, pollutant or contaminant to another location, such hazardous substance, pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act and which has been determined by the Administrator not to be releasing any hazardous waste into the environment.".

SEC. 118. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) IN GENERAL.—Notwithstanding the provisions of section 114, no person who is a response action contractor with respect to any release or threatened release of a hazardous substance or a pollutant or contaminant from a facility shall be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that was caused by conduct of the response action contractor which was negligent, reckless, or intentional misconduct.

"(3) PERSONS RETAINED OR HIRED.—Any person retained or hired by a response action contractor to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this subsection shall affect the liability under this Act or under any other authority of Federal or State law of any person other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing the liability under this title.

"(c) EXCEPTION TO EXEMPTION.—The exemption provided under subsection (a) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if he had not carried out any actions referred to in subsection (d) of this section.

"(d) DEFINITION.—For purposes of this section, a person is a 'response action contractor' with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility if such person is carrying out a written contract or agreement with—

"(1) the Administrator;

"(2) any other Federal agency;

"(3) a State; or

"(4) any responsible party;

to provide any response action under this Act or to provide any evaluation, planning, engineering, design, construction, equipment, or any ancillary services thereto for such facility.".

SEC. 119. FEDERAL FACILITIES.

Title I of CERCLA is amended by inserting the following new section immediately after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act.

"(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned and operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding or insurance.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of that Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

"(1) ESTABLISHMENT.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States which shall contain each of the following—

"(A) The inventory required to be submitted by that department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

"(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of that Act.

"(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

"(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

"(3) PERIODIC NOTICES.—6 months after establishment of the Docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the Docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the Docket.

"(d) EVALUATION.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the Docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List (NPL), the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study (RIFS) for such facility. In the case of any facility which is listed on the NPL before the date of enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a RIFS for such facility within 1 year after such date of enactment.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each RIFS conducted as provided in paragraph (1). Thereafter the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the RIFS.

"(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this paragraph shall include, but shall not be limited to each of the following—

"(A) A review of alternative remedial actions and selection of construction design by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to each of the following items—

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement;

"(C) A report on progress in conducting RIFS.

"(D) A report on progress in conducting remedial actions.

"(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the Administrator or otherwise, to any other officer or employee of the United States or to any other person.

"(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) Notice.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was disposed of or stored for one year or more, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage or disposal took place.

"(2) Form of notice; regulations.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) Contents of certain deeds.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was disposed of or stored for one year or more, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain a notice of the type and quantity of such hazardous substances, notice of the time at which such disposal or storage took place, and a description of remedial action taken, if any.

"(h) OBLIGATIONS UNDER SOLID WASTE ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).".

SEC. 120. CLEANUP STANDARDS.

Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 and abatement actions to be secured under section 106. Such actions shall be in accordance with the National Contingency Plan, to the extent practicable, and shall be in accordance with the requirements of this section.

"(b) COST EFFECTIVE ACTION.—In evaluating the cost-effectiveness of any such remedial action or abatement action, the Administrator shall select, to the maximum extent practicable and consistent with the protection of human health and the environment, permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account—

"(1) the long-term uncertainties associated with land disposal;

"(2) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(3) the persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(4) the risks associated with excavation, transportation, and redisposal;

"(5) short- and long-term potential for adverse health effects from human exposure; and

"(6) long-term maintenance costs.

"(c) LEVEL OR STANDARD OF CONTROL.—Any remedial action selected under section 104 and any abatement action under section 106(a) for a facility at which a release or threatened release occurs shall require that level or standard of control of each hazardous substance and pollutant and contaminant at that facility which is necessary to protect human health and the environment. The level or standard of control required in accordance with this section shall be required only with respect to remedial actions or abatement actions taken with respect to the release or threatened release of a hazardous substance, or pollutant or contaminant, from the facility concerned and shall not be applicable to contamination from other sources.

"(d) STANDARDS UNDER OTHER LAW.—If any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, and the Clean Water Act is applicable to the hazardous substance or pollutant, or contaminant concerned and is relevant and appropriate under the circumstances presented by the release or threatened release of such substance or pollutant or contaminant, any remedial action selected under section 104 and any abatement action under section 106(a) shall require a level or standard of control for such hazardous substance, pollutant, or contaminant which is equivalent to such standard. In requiring a level or standard of control for such hazardous substance the Administrator shall consider any water quality criteria issued under the Clean Water Act applicable to that substance.

"(e) ONSITE CONTAINMENT.—Where the remedial action selected under section 104 or secured under section

106 at any facility does not provide for the removal of hazardous substances, pollutants, and contaminants from such facility such that the level of such hazardous substances, pollutants, and contaminants at the facility is at or below those required pursuant to subsection (d), the containment of any such substance, pollutant, or contaminant at such facility shall comply with the relevant and appropriate standards applicable to facilities required to obtain permits under section 3005 of the Solid Waste Disposal Act, to the maximum extent practicable.

"(f) WAIVERS.—The Administrator may waive the application of the requirements of subsection (d) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings—

"(1) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment and is substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

"(2) The Administrator finds that compliance with the requirements of subsection (d) at that facility will result in greater risk to human health or the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

"(3) The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective.

"(4) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund (or equivalent amounts if financed by private parties), taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

"(5) The Administrator finds that the response action is an interim measure prior to final remedial action at the facility.

"(g) PERMITS NOT REQUIRED.—No permit shall be required under Federal, State, or local law for any removal or remedial action or abatement action undertaken by any person pursuant to section 104 or section 106 at the location of the release or threatened release.".

SEC. 121. SETTLEMENTS.

Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) EPA AUTHORITY TO ENTER INTO AGREEMENTS.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility or vessel from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PERSONS.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

"(2) REVIEWABILITY.—The Administrator's decisions concerning agreements under this subsection (including decisions regarding the availability of fund financing) shall not be subject to judicial review except as provided in subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the

Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIMITATION OF LIABILITY.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal has expired. Nothing in this subsection shall be construed to affect either of the following—

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible person with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or welfare or the environment. The entry of any such decree shall not be construed to be an acknowledgement by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment.

"(2) 104(b) AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible person with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such person. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible persons for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such persons and shall provide them with information concerning each of the following—

"(A) The identity of other notice recipients.

"(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible person in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible person is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional person into the negotiation or enter into a separate agreement with such person.

"(3) FAILURE TO PROPOSE.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

"(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

"(d) RELEASE FROM LIABILITY.—

"(1) COVENANT NOT TO SUE.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any future liability under this Act resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions are met—

"(A) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(B) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(C) The response action has been approved by the Administrator.

"(2) FACTORS.—In assessing the appropriateness of a covenant not to sue, the Administrator shall consider whether the covenant is in the public interest on the basis of such factors as the following—

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(3) CONTINGENCY FUND.—The other sources of funding referred to in paragraph (2)(E) may include any premiums paid to the Administrator by persons obtaining covenants under this section. Notwithstanding any other provision of law, the Administrator shall place such premiums in a contingency fund established by the Administrator under this paragraph. The Administrator may use the amounts placed in the contingency fund to carry out future remedial action under this section with respect to facilities which are subject to covenants not to sue under this subsection.

"(e) De Minimis Settlements.—Nothing in this Act shall be construed to prohibit the Administrator (in an action under section 106 or section 107 of this Act) from reaching final settlements with, and granting releases from liability to, any potentially responsible person in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparision to other hazardous substances at the facility—

"(1) The amount of the hazardous substances contributed by that person to the facility.

"(2) The toxic or other hazardous effects of the substances contributed by that person to the facility.

"(f) Definition of Potentially Responsible Person.—As used in this section, the term 'potentially responsible person' means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST CLOSURE.

Sections 107(k) and 111(j) of CERCLA are hereby repealed. Section 101(11) of CERCLA is amended by striking out "or, in the case of" and all that follows down to the semicolon at the end thereof.

SEC. 202. NATURAL RESOURCE ASSESSMENT REGULATIONS.

Section 301(c)(1) of CERCLA is amended by striking out "two years after the enactment of this Act" and substituting "6 months after the enactment of the Superfund Amendments of 1985".

SEC. 203. TRANSPORTATION OF HAZARDOUS MATERIALS.

Section 306 of the CERCLA is amended by inserting "and regulated" after "listed" in each place it appears in subsections (a) and (b).

SEC. 204. STATE PROCEDURAL REFORM.

Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the Federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'Federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury referred to in subsection (a)(1) was caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'Federally required commencement date' means the later of the date referred to in subparagraph (A) or the following—

"(i) In the case of a minor, the date on which the minor reaches the age of majority as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to actions brought after December 11, 1980.".

SEC. 205. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and substituting "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of title I of this Act.".

SEC. 206. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) CONGRESSIONAL FINDING.—The Congress makes the following findings—

(1) Corrective action regulations under subtitle I of the Solid Waste Disposal Act (relating to under-

ground storage tanks) have not been promulgated as of the date of the enactment of this Act.

(2) In the case of certain releases of petroleum from underground storage tanks, until those regulations are promulgated and take effect, there may be no tank owner or operator which can be required to provide the necessary corrective action with respect to such releases.

(3) For an interim period it is necessary to provide Federal financial assistance to protect human health and the environment from hazards associated with these releases.

(b) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE (C)(4) REGULATIONS.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

"(A) undertake corrective action with respect to any release of petroleum (as described in sec tion 9001(2)(B)) into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

"(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The Administrator shall use funds in the Petroleum Release Response Account of the Hazardous Substances Superfund for payment of costs incurred for corrective action under subparagraph (A). The Administrator may issue an order to require the owner or operator of an underground storage tank to comply with subparagraph (B). Any violation of such an order shall be enforced in the same manner as provided in the case of an order under section 7003.

"(2) AFTER (C)(4) REGULATIONS.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date the Administrator may undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B)) into the environment from an underground storage tank only if such action is necessary, in the judgement of the Administrator, to protect human health and the environment and one or more of the following situations exists—

"(A) No person can be found who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

"(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

"(3) RECOVERY OF COSTS.—Whenever costs have been incurred by the Administrator for undertaking corrective action under this subsection with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be strictly liable to the Administrator for such costs. If more than one person is an owner or operator of such tank, the liability under this paragraph shall be joint and several.

"(4) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), and (3) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make grants to the State from the Petroleum Release Account of the Hazardous Substance Response Trust Fund. Such grants shall be apportioned among the States applying for grants based upon estimates made by the Administrator of each State's pro rata share of the total potential governmental corrective actions costs likely to be incurred under this subsection.

"(5) DEFINITIONS OF OWNER AND OPERATOR.—As used in this section—

"(A) The term 'owner' means with respect to an underground storage tank, each person who owns a property interest in that tank or who owned a property interest in that tank after November 8, 1984.

"(B) The term 'operator' means any person who has the responsibility for the day-to-day operation of the tank at the time corrective action is undertaken.

The term 'owner' shall not include any mortgagee or other person who owns a security interest in the tank or who has acquired title to the tank by reason of a mortgage or other security interest.".

(c) PETROLEUM RELEASE RESPONSE ACCOUNT.—

(1) CREATION OF ACCOUNT.—There is established in the Hazardous Substances Superfund a separate account to be known as the "Petroleum Release Response Account" (hereinafter in this section referred to as the "Separate Account"). The Separate Account shall consist of the following amounts—

(A) Amounts appropriated or transferred to the Separate Account as provided in the Internal Revenue Code of 1954.

(B) Amounts credited to the Separate Account under paragraph (2) of section 223(b) of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Separate Account shall be available only for purposes of corrective action undertaken by the Administrator pursuant to section 9003(h) of the Solid Waste Disposal Act.

SEC. 207. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

"(2) against—

"(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

"(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency, or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under paragraph (1) of subsection (a) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

"(d) SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or disposal—

"(A) to the Administrator;

"(B) to the State in which the alleged violation occurs; and

"(C) to any alleged violator.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

"(2) ACTIONS UNDER PARAGRAPH (1).—No action may be commenced under subsection (a)(1) with respect to any violation referred to in such subparagraph if the Administrator has commenced and is diligently pursuing an action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.

"(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

"(h) INTERVENTION.—In any action under this section the United States, if not a party, may intervene as a matter of right.

"(i) DEFINITIONS.—The terms used in this section shall have the same meaning as when used in title I.".

SEC. 208. INDIAN TRIBES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section at the end thereof:

“SEC. 123. INDIAN TRIBES.

“(a) Definition.—As used in this Act, the term ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

“(b) Future Maintenance and Cost-Sharing Requirements.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

“(1) Land or water held by an Indian tribe.

“(2) Land or water held by the United States in trust for Indians.

“(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

“(4) Land or water otherwise within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

“(c) Contracts or Cooperative Agreements.—

"(1) AUTHORITY.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

"(2) ENFORCEMENT.—If the President enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

"(d) NATURAL RESOURCES LIABILITY.—

"(1) LIABILITY TO TRIBE.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

"(2) EXEMPTIONS.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following—

(A) The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environment analysis.

(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

"(3) RECOVERY.—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

"(e) DELEGATION.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

"(f) APPLICATION OF OTHER PROVISIONS.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".

(b) CONFORMING AMENDMENTS.—(1) Section 101(a)(16) of CERCLA is amended by striking "or" the last time it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(2) Section 107 of CERCLA is amended as follows:

(A) In subsection (a), insert "or an Indian tribe" after "State".

(B) In subsection (i), insert "or Indian tribe" after "State" the first time it appears.

(C) In subsection (j), insert "or Indian tribe" after "State" the first time it appears.

SEC. 209. COMMENCEMENT OF DRILLING FLUIDS, ETC. STUDY.

The Administrator of the Environmental Protection Agency shall commence the study required under section 8002(m) of the Solid Waste Disposal Act not later than 6 months after the date of the enactment of this Act.

TITLE III—COMMUNITY RIGHT TO KNOW AND EMERGENCY PLANNING

SUBTITLE A—COMMUNITY RIGHT-TO-KNOW

SEC. 301. BASIC NOTIFICATION REQUIREMENTS.

(a) MATERIAL SAFETY DATA SHEETS.—

(1) BASIC REQUIREMENT.—Each owner or operator of a facility at which a hazardous chemical (as de-

fined in section 324) is produced, used, or stored shall file a material safety data sheet for such hazardous chemical with the State and local officials designated under section 302. Whenever a material safety data sheet is revised (as required under regulations under the Occupational Safety and Health Act of 1970) each such facility owner or operator shall file, as promptly as practicable but not later than 3 months after such revision, the revised material safety data sheet with such State and local officials.

(2) CONTENTS OF SHEET.—Each material safety data sheet required to be filed under this subsection shall contain the same items of information as are required for material safety data sheets developed under regulations under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1910.1200(g)).

(b) EFFECTIVE DATE.—The requirements of this section shall take effect on July 1 1986.

SEC. 302. PUBLIC AVAILABILITY OF MATERIAL SAFETY DATA SHEETS.

(a) DESIGNATION OF OFFICIALS.—Before May 1, 1986, the Governor of each State shall designate appropriate State and local (or regional) agencies within such State as required recipients of information under this subtitle for facility owners and operators located within that State or, in the case of a local or regional agency, facility owners and operators located within the political subdivision or combination of political subdivisions concerned. Designations under this subsection may be revised as may be appropriate.

(b) AVAILABILITY TO PUBLIC.—Each agency designated under subsection (a) which has received any material safety data sheet shall make such sheet available to interested members of the public.

SEC. 303. AVAILABILITY OF MATERIAL SAFETY DATA SHEETS TO OTHER OWNERS AND OPERATORS.

(a) BASIC REQUIREMENT.—Each facility owner or operator who supplies a hazardous chemical to any other facility owner or operator shall furnish a material safety data sheet to each such other facility owner or operator. Such sheet shall be transmitted before (or at the time of)—

(1) the initial shipment by such facility owner or operator to the other facility owner or operator; and

(2) the first shipment by such facility owner or operator to the other facility owner or operator following any revision of a material safety data sheet previously transmitted by such facility owner or operator to such other facility owner or operator.

(b) PROVIDING OF SHEET.—Any material safety data sheet required to be furnished to a facility owner or operator under this section in connection with a shipment may be provided with the shipment or sent to the facility owner or operator separately prior to the time of shipment.

(c) UNAVAILABILITY FROM MANUFACTURER OR IMPORTER.—Except for a facility owner or operator who is a manufacturer or importer of the hazardous chemical, the requirements set forth in this section and in section 301 shall not apply if such facility owner or operator has not received a material safety data sheet for such hazardous chemical from the person who supplied such hazardous chemical to such facility owner or operator.

(d) EFFECTIVE DATE.—The requirements of this section shall take effect with respect to shipments after May 1, 1986.

SEC. 304. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—A facility owner or operator required to file a material safety data sheet under section 301 shall provide the specific chemical identity of a hazardous chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (c). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Following such a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a substance under section 323 when such information is a trade secret shall not apply to information required to be provided under this subsection.

(b) Medical Emergency.—A facility owner or operator required to file a material safety data sheet under section 301 shall provide a copy of the material safety data sheet, including the specific chemical identity of a hazardous chemical, to any treating physician or nurse who requests such information if such physician or nurse determines—

(1) that a medical emergency exists;

(2) the specific chemical identity of the hazardous chemical is necessary for emergency or first-aid diagnosis or treatment;

(3) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(4) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Immediately following such a request, the facility owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a substance from a material safety data sheet under section 323 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the facility owner or operator disclosing such information may require a written confidentiality statement in accordance with subsection (c) and a statement setting forth the items listed in paragraphs (1) through (4) as soon as circumstances permit.

(c) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) shall, in accordance with such subsection (a), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. The confidentiality agreement under this subsection may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

SUBTITLE B—EMERGENCY RESPONSE

SEC. 311. EMERGENCY RESPONSE PLANNING.

(a) STATE COMMISSIONS; LOCAL COMMITTEES.—Within 90 days after the enactment of this section, the Governor of each State shall appoint a Hazardous Substance Emergency Response Commission for that State (or designate one or more existing emergency response organizations within the State) to coordinate response planning in the State for hazardous substance emergencies. Within 120 days of such appointment or designation, the Commission shall designate local Emergency Response Committees to develop Emergency Response Plans for their communities. Upon request, the Commission shall provide assistance to the local Emergency Response Committees in developing and implementing Emergency Response Plans.

(b) PREPARATION OF PLANS.—Each local Emergency Response Committee shall prepare a proposed Emergency

Response Plan under this section. The plan shall be developed by the Committee in consultation with those persons or organizations which would be expected to play a major role in the event of a hazardous substance emergency, including owners and operators of facilities at which substantial inventories of hazardous substances are maintained, elected officials, law enforcement and firefighting personnel, public health, medical, hospital, and environmental protection personnel, civil defense personnel, transportation officials, and representatives of broadcast and print media. The proposed plan shall be made available to the public within 14 months of Committee formation. The Committee shall provide a period of 60 days for public comment. The Committee shall conduct a public hearing no later than 25 days after the comment period begins. A final plan shall be published by the Committee before the date 20 months after formation of the Committee. The final plan shall be accompanied by the Committee's response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(c) Contents of Plan.—

(1) In general.—Each emergency response plan under this section shall be designed to minimize injury to human health and the environment in the event of a hazardous substance emergency. The plan shall be in-

tegrated with existing emergency response plans at the discretion of the Emergency Response Committee.

(2) ELEMENTS.—The plan shall contain at least the elements listed below:

(A) The names and telephone numbers of emergency response personnel at each facility in the community at which a substantial inventory of a hazardous substance is maintained.

(B) A designation of those State or local officials in charge of responding to a hazardous substance emergency and those officials who are to be notified under section 312 in case of a hazardous substance emergency.

(C) A description of notification procedures and communications systems (including alarm and warning systems) to be used in the event of a hazardous substance emergency.

(D) A description of emergency equipment and facilities in the community and an identification of the persons responsible for making them available in case of emergency.

(E) A description of the types of measures that may be taken to mitigate and minimize the risks to human health and the environment posed by various types of hazardous substance emergencies.

(F) Emergency evacuation plans, as well as an evaluation of the adequacy of existing transportation facilities to accomplish an evacuation.

(G) A description of training programs and drill schedules to be used for purposes of emergency response planning and preparedness.

(H) An evaluation of medical, police, and firefighting resources available in the event of a hazardous substance emergency and recommendations, if appropriate, concerning what additional resources should be designated by State or local governments for responding to such emergency.

SEC. 312. EMERGENCY INFORMATION.

(a) IMMEDIATE NOTICE.—The facility owner or operator of a facility at which a hazardous substance emergency occurs shall immediately provide notice of the occurrence of the emergency to the State and local officials who have been designated to receive such notification in the Emergency Response Plan for the community in which the facility is located. Such notice shall include as much of the information referred to in subsection (c) as is known to the owner or operator at the time notice under this subsection is provided.

(b) EMERGENCY BULLETIN.—As soon as practicable after a hazardous substance emergency, the facility owner or operator of the facility at which the hazardous substance emergency occurred shall furnish an emergency bulletin under this section to the State and local officials who have been designated to receive such bulletins in the Emergency Response Plan for the community in which the facility is located. Such officials shall make the emergency bulletin available to interested members of the public.

(c) CONTENTS OF EMERGENCY BULLETIN.—Each emergency bulletin under this section shall include a full description of the hazardous substance emergency, including, at a minimum—

(1) the chemical name or identity of the hazardous substance involved in the emergency,

(2) an estimate of the quantity of such substance that was released into the environment during the emergency,

(3) the time and duration of the release,

(4) the actions taken to respond to and contain the release, and

(5) any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

SUBTITLE C—GENERAL PROVISIONS

SEC. 321. STATE AND LOCAL LAW.

Except as provided in this section, no State or local government may adopt or enforce any requirement pertaining to any aspect of chemical hazard communication which is governed by any provision of this title unless the State or local requirement is identical to the requirements of this title which govern the same aspect of chemical hazard communication. Any State government may adopt and enforce any provision of law or regulation pertaining to hazardous chemical communication which—

(1) applies to a manufacturer or importer of a hazardous chemical;

(2) is supplemental to the requirements of this title; and

(3) is not in conflict with such requirements.

SEC. 322. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any person who violates any provision of this title by failing to—

(1) file or furnish a material safety data sheet as required by section 301;

(2) provide information to a physician or nurse in accordance with section 304(b); or

(3) furnish notice or an emergency bulletin as required by section 312;

shall be liable to the United States for a civil penalty in an amount not to exceed $20,000 for each such violation.

(b) COLLECTION OF PENALTY.—Any civil penalty for which a person is liable under this title shall be collected in an action brought by the United States in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(c) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 304.—Whenever any facility owner or operator required to provide information under section 304(b) to a doctor or nurse who has requested such information fails or refuses to provide such information in accordance with section 304(b), such doctor or nurse may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 304(b).

SEC. 323. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION FROM MSDS.—Any facility owner or operator required to file a material safety data sheet under section 301 may withhold from such sheet the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, if—

(1) the claim that the information withheld is a trade secret can be supported;

(2) information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed; and

(3) the material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret.

Nothing in this section shall authorize any person to withhold information which is required to be provided to a health professional or a doctor or nurse in accordance with section 304.

SEC. 324. DEFINITIONS FOR TITLE III.

As used in this title—

(1) COMMISSION.—The term "Commission" means a Hazardous Substance Emergency Response Commission (or other existing organization) designated by a Governor under section 311.

(2) HAZARDOUS CHEMICAL.—The term "hazardous chemical" means any substance which is treated as a "hazardous chemical" pursuant to the Occupational Safety and Health Administration's Hazard Communication Standard (presently codified in 29 C.F.R. section 1910.1200), except that the following substances shall not be treated as a "hazardous chemical" for purposes of this title:

(A) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(B) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use.

(C) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(D) Any substance to the extent it is used in a laboratory, hospital, or other medical facility under the direct supervision of a technically qualified individual.

(E) Any substance to the extent it is used in routine agricultural operations.

(3) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means a material safety data sheet developed for a hazardous chemical pursuant to the hazard communication regulations promulgated under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1910.1200).

(4) FACILITY OWNER OR OPERATOR.—The term "facility owner or operator" means the owner or operator of a facility at which a hazardous chemical is produced, used, or stored.

(5) PERSON.—The term "person" means any individual, corporation, partnership, association, or other entity.

(6) HAZARDOUS SUBSTANCE EMERGENCY.—The term "hazardous substance emergency" means a release of a hazardous substance which is—

(A) unexpected, or

(B) not continuous and substantially in excess of the normal amounts released as a result of routine manufacturing, processing, or storage.

(7) HAZARDOUS SUBSTANCE.—

(A) IN GENERAL.—The term "hazardous substance" means a TLV hazardous substance, a combustible liquid, a flammable gas, a flammable liquid, a flammable solid, or a reactive substance which may present an imminent and substantial endangerment to public health.

(B) TERMS USED IN SUBPARAGRAPH (A).—The terms "combustible liquid", "flammable gas", "flammable liquid", "flammable solid", and "reactive substance" shall have the same meaning as when used in the hazard communication regulations under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1200). The term "TLV hazardous substance" means any substance for which a Threshold Limit Value (TLV) of—

(i) 10 parts per million (ppm) or less, or

(ii) 3 mg per cubic meter or less

has been established by the American Conference of Governmental Industrial Hygienists.

(C) MIXTURES.—(i) A mixture shall be deemed to be a "combustible liquid", a "flammable gas", a "flammable liquid", a "flammable solid", or a "reactive substance", as appropriate, if—

(I) it meets the definition of any of such terms when tested as a whole; or

(II) if the mixture has not been tested as a whole, it is determined by the facility owner or operator to be a "combustible liquid", a "flammable gas", a "flammable liquid", a "flammable solid", or a "reactive substance" based upon an evaluation of whatever scientifically valid data are available.

(ii) A mixture shall be deemed to be a "TLV hazardous substance" if—

(I) it qualifies as such a substance when tested as a whole; or

(II) if the mixture has not been tested as a whole, it contains, by weight or volume, 1 percent or more (0.1 percent or more in the case of a carcinogen) of such a substance.

TITLE IV—PROVISIONS RELATING TO TAXATION

SEC. 401. 5-YEAR EXTENSION.

(a) In General.—

(1) Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended as follows:

(A) Strike out "$900,000,000" and substitute "$4,900,000,000".

(B) Strike out "$500,000,000" and substitute "$2,700,000,000".

(C) Strike out "1985", "1983", and "1984" and substitute "1990", "1988", and "1989" respectively.

(2) Section 303 of the CERCLA is hereby repealed.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 402. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 403. TAX ON CHEMICAL FEEDSTOCKS.

(a) IN GENERAL.—Subchapter B of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on certain chemicals) is amended to read as follows:

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton:
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(3) IMPORTER.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) TON.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) Exceptions; Other Special Rules.—For purposes of this subchapter—

"(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).

"(2) Substances used in the production of fertilizer.—

"(A) In general.—In the case of a nitric acide, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

"(B) Qualified fertilizer substance.—For purposes of this section, the term 'qualified fertilizer substance' means any substance—

"(i) used in a qualified fertilizer use by the manufacturer, producer, or importer, "(ii) sold for use by any purchaser in a qualified fertilizer use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

"(C) QUALIFIED FERTILIZER USE.—The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(5) Substances used in the production of motor fuel, etc.—

"(A) In general.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

"(B) Qualified fuel substance.—For purposes of this section, the term 'qualified fuel substance' means any substance—

"(i) used in a qualified fuel use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fuel use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualifed fuel use.

"(C) Qualified fuel use.—For purposes of this subsection, the term 'qualified fuel use' means—

"(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

"(ii) any use as such a fuel.

"(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

"(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

"(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

"(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

"(ii) any solution or mixture containing any chemical described in clause (i).

"(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

"(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or "(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualifed animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

"(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and

"(B) any person uses such substance as a qualified animal feed substance, then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 404. WASTE END TAX.

There shall be imposed under the Internal Revenue Code of 1954 a waste end tax sufficient to raise revenues in the amount of $300,000,000 in each of the 5 fiscal years after fiscal year 1985 for deposit into the Hazardous Substance Response Trust Fund established by section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 405. BROAD-BASED TAX.

There shall be imposed under the Internal Revenue Code of 1954 a broad-based corporate tax sufficient to raise revenues in the amount of $900,000,000 in each of the 5 fiscal years after fiscal year 1985 for deposit in the Hazardous Substance Response Trust Fund established by section

221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 406. TAX FOR PETROLEUM RELEASE RESPONSE ACCOUNT.

There shall be imposed under the Internal Revenue Code of 1954 such taxes as are necessary to raise revenues in the amount of $250,000,000 in each of the 5 fiscal years after the fiscal year 1985 for deposit in the Petroleum Release Response Account established under section 206 of this Act (the "Separate Account"). No amount of such taxes shall be imposed during fiscal year 1988 or 1989 or 1990 if on September 30 of the preceding fiscal year, the unobligated balance of the Petroleum Release Response Account (the "Separate Account") exceeds $250,000,000.

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[JOINT COMMITTEE PRINT]

BACKGROUND AND ISSUES RELATING TO HOUSE BILLS FOR REAUTHORIZATION AND FINANCING OF THE SUPERFUND

SCHEDULED FOR A HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS

ON MAY 9, 1985

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

MAY 8, 1985

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INTRODUCTION

The Committee on Ways and Means has scheduled a public hearing on the reauthorization of the Hazardous Substance Response Trust Fund ("Superfund") on May 9, 1985. This Fund is provided for under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the tax provisions of which are scheduled to expire after September 30, 1985.

The first part of the pamphlet[1] is a summary. The second part discusses the tax and other provisions of present law. The third part reviews the operation of the current Superfund program. Part four summarizes the Administration's Superfund reauthorization proposal, which was introduced by request, as H.R. 1342. Part five summarizes H.R. 5640, which was passed by the House of Representatives on August 10, 1984, and provided for a five-year extension of the Superfund. (The 98th Congress expired without further action being taken on this bill.) Part six summarizes the other House bills, introduced thus far in the 99th Congress, relating to financing of the Superfund. Part seven analyzes issues relating to the reauthorization and financing of the Superfund.

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[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Background and Issues Relating to House Bills for Reauthorization and Financing of The Superfund* (JCS-13-85), May 8, 1985.

I. SUMMARY

A. Present Law

Hazardous Substance Response Trust Fund

Under present law, excise taxes are imposed on crude oil and certain chemicals, and revenues equivalent to these taxes are deposited into the Hazardous Substance Response Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances and pollutants or contaminants into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

A crude oil tax of 0.79 cent per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax on chemical feedstocks is imposed on the sale or use of 42 specified organic and inorganic feedstocks if they are produced in or imported into the United States. The taxable feedstocks generally are hazardous or create hazardous products or wastes when used. The rates vary from 22 cents per ton to $4.87 per ton. (See Table 1 for a list of current law tax rates on chemical feedstocks.)

These excise taxes will terminate after September 30, 1985. However, the taxes would have been suspended during calendar years 1984 or 1985, if, on September 30, 1983, or 1984, respectively, the unobligated trust fund balance had exceeded $900 million, and if the unobligated balance on the following September 30 would have exceeded $500 million, even if these excise taxes were suspended for the calendar year in question. (The unobligated Trust Fund balance was $374.1 million at the end of fiscal year 1983, and $295.1 million at the end of 1984.) Further, the authority to collect taxes will otherwise terminate when cumulative receipts from these taxes reach $1.38 billion. (Cumulative revenues from these excise taxes through September 30, 1984, amounted to $0.863 billion.)

Post-closure Liability Trust Fund

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton is imposed on hazardous waste received at a qualified hazardous waste disposal facility which will remain at the facility after its closure. These tax receipts are deposited into the Post-closure Liability Trust Fund. This trust fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities that meet certain conditions. No liabilities have yet been assumed by the Trust Fund. These provisions were enacted in CERCLA.

Authority to collect the tax would be suspended for any calendar year after 1984, if the unobligated balance in the Trust Fund exceeded $200 million on the preceding September 30. Further, authority to collect the tax will terminate when cumulative receipts from the crude oil and chemical excise taxes described above reach $1.38 billion, or, if earlier, after September 30, 1985. (Cumulative receipts from the post-closure tax were $3 million through the first half of fiscal 1984.)

B. Administration Proposal (H.R. 1342) [2]

Tax provisions

The Administration proposal would extend the Superfund through September 30, 1990, and provide a projected $4.5 billion in tax revenues ($5.3 billion including interest and recoveries) to the Fund during the extension period. These revenues would be derived primarily from the following sources:

Petroleum and feedstocks chemicals taxes.—A five-year extension of the taxes on petroleum and feedstock chemicals, at their present law rates. These taxes would generally expire after September 30, 1990; however, a special rule would provide for earlier suspension or termination of the taxes if the unobligated Superfund balance exceeds $1.5 billion. There is also a trust fund provision under which authority to collect the petroleum, feedstock chemical, and waste management taxes would expire when and if cumulative Superfund receipts after September 30, 1985 (i.e., during the reauthorization period) total $5.3 billion.

Waste management tax.—A tax on the treatment, storage, disposal (including ocean disposal), or export of hazardous wastes ("waste management" tax), effective October 1, 1985. This tax would terminate on September 30, 1990 unless extended through March 31, 1991 in the event of a revenue shortfall. This tax would be imposed at four distinct rates:[3] (1) a rate of 25 cents per ton on hazardous waste received at waste water treatment facilities; (2) a rate of $5 per ton on hazardous waste received at deep well injection facilities; (3) a rate of $35 per ton, phasing up to $40 per ton during the reauthorization period, on hazardous waste received at landfills, surface impoundments (other than surface impoundments contained in waste water or deep well injection facilities), waste piles, or land treatment units;[4] and (4) a rate of $6 per ton, phasing up to $7.80 per ton, on any hazardous waste received at all other RCRA permitted units, as well as the export or ocean disposal of hazardous waste. These rates would be further adjusted, beginning October 1, 1987, to compensate for shortfalls from overall Superfund revenue targets. Exemptions would be provided for certain hazardous waste disposals pursuant to CERCLA and RCRA and for waste generated at a Federal facility; however, no general exemption would be provided for the treatment of hazardous wastes. The waste management tax is intended to raise approximately two-thirds of the total Superfund tax revenues under the Administration proposal.

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[2] This proposal was introduced by Mr. Broyhill at the request of the Administration.

[3] This summary reflects modifications to the waste management tax proposed by the Treasury Department in testimony before the Senate Committee on Finance, April 25, 1985.

[4] These and other terms generally would be defined by reference to Title II of the Solid Waste Disposal Act, as amended ("SWDA"), also known as the Resource Conservation and Recovery Act ("RCRA").

The Administration proposal would repeal the present law Post-closure Liability Trust Fund and the associated waste disposal tax (Code secs. 4681 and 4682), effective October 1, 1985. Amounts in the Post-closure Liability Trust Fund at that time would be transferred to the Superfund.

Trust fund provisions

Under the Administration proposal, the substantive trust fund provisions would generally be equivalent to present law. However, the proposal would delete natural resource damage claims (section 111(b) of present law CERCLA) as a permitted Superfund expenditure purpose.

C. Revenue Provisions of H.R. 5640 as passed by the House in 1984

Hazardous Substance Superfund

H.R. 5640 (98th Congress), as passed by the House of Representatives on August 10, 1984,[5] would have extended and expanded the Superfund program. H.R. 5640 would have provided $10.1 billion of financing to the Superfund over the 5-year reauthorization period ($7.8 billion of tax revenues and $2.3 billion of general revenue appropriations), and would have expanded the program to include: response to releases of petroleum and petroleum products; emergency relief and health effect studies; toxicological profiles and hazard evaluation projects; and a specific schedule for cleanup of hazardous waste sites. (These provisions are discussed in Part V below).

To finance this program, H.R. 5640 would have increased the present law petroleum tax from 0.79 cent per barrel to 7.86 cents per barrel. The excise tax on chemical feedstocks would have been increased and applied to 15 additional feedstocks. (These tax rates would have been subject to a 4-year phase-in and an inflation adjustment.) The bill further allowed a refund or credit for taxes on exported feedstocks. The amendments to the petroleum and chemical feedstock taxes under H.R. 5640 generally would have been effective from January 1, 1985, through September 30, 1990.

Under H.R. 5640, the petroleum and chemical feedstock tax rates would have increased further on January 1, 1987, if a hazardous waste tax ("waste-end tax") had not been enacted by July 1, 1986. The Treasury (in consultation with the Environmental Protection Agency) would have been required to develop a legislative proposal for such a tax by April 1, 1985. The Treasury also would have been required to study (in consultation with the International Trade

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[5] The 98th Congress expired without further action being taken on the bill. See House Committee on Ways and Means Report (H.R. Rep. No. 98-890, part 2, August 8, 1984) for detailed description of the tax and trust fund provisions of H.R. 5640 as passed by the House (other than the floor amendment relating to the Comprehensive Oil Pollution Liability Trust Fund).

Commission) the feasibility of imposing a tax on imported substances derived from taxable chemical feedstocks.

H.R. 5640 generally would have continued the expenditure purposes of the present law Superfund; however, no further funds could have been used for the payment of natural resource damage claims. Appropriations of $2.3 billion to the Superfund from general revenues would have been authorized for fiscal years 1986 through 1990. Of the amount of general revenue appropriated, not more than $850 million was to be allocated to a special account for expenditures related to releases of petroleum or petroleum products, including releases from leaking underground storage tanks. Expenditures for such purposes were to be made only from this special account.

H.R. 5640 would have repealed the Post-closure Liability Trust Fund and the related tax on hazardous waste, effective September 30, 1983. Any amounts paid under that tax were to be refunded to the taxpayers who paid them.

H.R. 5640 would have required that no fewer than 1,600 sites be placed on the National Priorities List by 1988, and that the Environmental Protection Agency ("EPA") begin cleanup work at no fewer than 150 sites each year. The bill also would have clarified the liability of private parties for cleanup costs incurred by the Superfund, and permitted citizens' suits to force the EPA Administrator to perform any act or duty required under CERCLA, as amended, which is not discretionary with the EPA.

Comprehensive Oil Pollution Liability Trust Fund

A House floor amendment to H.R. 5640, adopted in 1984, would have established a separate Comprehensive Oil Pollution Liability Trust Fund to be financed primarily by a 1.3 cents per gallon tax on crude oil. This Trust Fund was to be a separate corporate entity, and the funds were to be used to pay claims for damages caused by oil pollution from vessels or offshore facilities located in navigable waters in the United States. This tax would have been suspended if the Trust Fund balance reached $200 million, and income from securities held by the Trust Fund were to be refunded if the Trust Fund balance exceeded $300 million. These provisions generally would have been effective 180 days after enactment, and did not have an expiration date.

D. Other House Bills Relating to Financing of Superfund

H.R. 1775 (Rep. Moore)—"Superfund Revenue Reauthorization Act of 1985"

This bill is intended to provide $5.3 billion of financing for the Superfund over the 5-year reauthorization period. Of this amount, $1.5 billion is from general revenue appropriations, $0.8 billion is from interest income and the recovery of clean-up costs from responsible parties, and $3.0 billion is from taxes. The tax revenues are derived from a tax on petroleum and chemical feedstocks, a tax on imported chemical derivatives, and a tax on hazardous wastes:

Petroleum tax.—The current law tax on petroleum and imported petroleum products would be reduced from 0.79 cent to 0.17 cent per barrel.

Chemical feedstocks tax.—The existing list of taxable chemical feedstocks would be expanded to include the same feedstocks taxed under H.R. 5640 as passed by the House in 1984. The tax rates on petrochemical feedstocks would generally be decreased, while the tax rates on inorganic feedstocks would generally be increased (as compared to present law). The tax rates would be indexed for inflation, and a credit or refund would be allowed for exported chemical feedstocks.

The amended petroleum and chemical feedstock taxes would be effective from October 1, 1985, through September 30, 1990, but would be suspended under specified conditions when the unobligated Trust Fund balance exceeded $1.5 billion.

Imported chemical derivatives tax.—A tax, effective October 1, 1986, would be imposed on imported substances directly and substantially produced from taxable feedstocks (as determined under Treasury regulations). The amount of this tax would be equal to the tax that would have been imposed on the feedstocks used to manufacture the imported substance (if the imported derivative were produced in the United States). If this could not be established, the tax would be equal to 5 percent of the appraised value of the imported substance. This tax would terminate on September 30, 1990.

Tax on hazardous waste.—A tax would be imposed on the receipt of hazardous waste at a facility regulated under the Resource Conservation and Recovery Act ("RCRA") or at an ocean disposal facility. A "backup" tax would be imposed on hazardous waste, not otherwise subject to tax within 270 days of generation, except waste generated by a small generator (100 kilograms or less of hazardous waste per month).

The hazardous waste tax would be imposed at a rate of $9.80 per ton in fiscal year 1986, increasing to $16.32 per ton in 1990, for land disposal (including landfills, surface impoundments, waste piles, and land treatment units). A lower rate of $2.45 per ton (increasing to $4.08 per ton in 1990) would apply to all other forms of storage or disposal of hazardous waste including underground injection wells. The backup tax would be imposed at the higher rate (reduced to the lower rate on exports). These rates would be increased under a statutory formula if necessary to meet overall Superfund revenue targets. An exclusion from the tax would be provided for biological wastewater treatment facilities meeting RCRA standards and for other forms of treatment having a destruction efficiency at least as great as incineration. Additionally, hazardous wastes associated with certain Superfund response actions would be exempt from the tax.

This tax would generally be effective from October 1, 1985, through September 30, 1990; however, the tax would be extended until March 31, 1991, if necessary to meet the intended 5-year revenue target.

Post-closure Liability Trust Fund.—The bill would repeal the Post-closure Liability Trust Fund and the associated tax on hazardous waste effective October 1, 1983 (i.e., the original effective date of he tax).

Other trust fund provisions.—The remaining trust fund provi-ions would be similar to H.R. 5640 as passed by the House in 1984, ut would not include a special account for petroleum-related reeases.

H.R. 2018 (Reps. Schneider, Wyden and others)—"Hazardous Waste Reduction Act of 1985"

This bill would impose a tax on all forms of land and ocean disposal of hazardous waste that is regulated by the Resource Conservation and Recovery Act ("RCRA"), as well as on exports of hazardous waste and unregulated placements of hazardous waste (subject to certain exceptions). The tax would be intended to raise $286 million per year as part of a comprehensive Superfund financing package. The tax would be imposed at a rate of $20 per ton on exports, unregulated placements, and all storage and disposal methods other than underground injection wells. Injection wells would be taxed at a $5 per ton rate. Hazardous waste rendered nonhazardous within one year of receipt at a treatment, storage, or disposal facility would receive a full credit against the tax. Further, separate exemptions would be provided for qualified wastewater treatment facilities; certain removal or remedial actions under CERCLA; and movement of waste from interim status facilities closed by EPA under RCRA. Tax rates would be increased for any fiscal year during which Treasury estimated that this target would not be met.

The tax under H.R. 2018 would be effective from January 1, 1986, through September 30, 1990. The Treasury Department would be required to submit a report to Congress, by April 1, 1986, on the progress being made in implementing the tax, and a further report (by January 1, 1987) including recommendations (if any) for improving the tax.

H.R. 2022 (Rep. Sikorski and others)—"Superfund Expansion and Protection Act of 1985"

Tax provisions

This bill is intended to raise $11.7 billion in Superfund revenues ($1.4 billion in general revenue appropriations and $10.3 billion of tax revenues) over the 5-year reauthorization period. The tax revenue are derived from the following sources:

Petroleum tax.—An increase in the current law tax on petroleum and imported petroleum products from 0.79 cent to 15.8 cents per barrel.

Chemical feedstocks tax.—A tax on the same list of chemical feedstocks as under H.R. 5640, as passed by the House in 1984, at rates that would have applied under H.R. 5640. (These rates are higher than present law for both organic and inorganic chemicals.) The tax rates would be indexed for inflation, and a credit or refund would be allowed for exported feedstocks. The bill also would require a study of the feasibility of a tax on imported chemical derivatives, but would not actually impose such a tax.

The amended petroleum and chemical feedstock taxes would be effective from October 1, 1985, through September 30, 1990.

Tax on hazardous waste.—A tax, beginning on October 1, 1986, on the receipt of hazardous waste at a RCRA-regulated facility or for purposes of ocean disposal, as well as the export of hazardous waste. This tax would be imposed at a rate of $5.05 per ton in fiscal year 1987, increasing to $8.16 per ton in 1990, for land disposal of hazardous waste (including landfills, surface impoundments, waste piles, land treatment units, and underground injection wells). A lower rate of $1.34 per ton (increasing to $2.19 per ton in 1990) would apply to export, ocean disposal, and all other forms of storage or disposal of hazardous waste. Exclusions from the tax would be provided for wastes disposed of as part of certain Superfund response activities and for Federally generated waste. Where the tax would not otherwise apply (e.g., "midnight dumping"), a tax would be imposed at the higher statutory rate on the responsible person (subject to certain exceptions).

The tax on hazardous waste generally would be effective from October 1, 1986, through September 30, 1990.

The bill would repeal the Post-closure Liability Trust Fund and the associated tax on hazardous waste, effective October 1, 1983 (i.e., the original effective date of the tax).

Trust fund provisions

The bill would authorize general revenue appropriations of $280 million per year to the Superfund for fiscal years 1986 through 1990 (an aggregate of $1.4 billion). The remaining trust fund provisions would be similar to H.R. 5640 as passed by the House in 1984, including the allocation of up to $850 million of general revenues to a special fund for responding to leaking underground storage tanks and other petroleum-related releases. The bill also contains Superfund expenditure provisions which are similar to provisions of H.R. 5640.

H.R. 2208 (Reps. R. M. Hall and Fields)—"Hazardous Substance Response Act of 1985"

This bill would impose a tax on hazardous wastes designed to raise approximately $1.5 billion of revenue over a 5-year period. This tax is intended as a partial, rather than an exclusive, source of revenues for the Superfund.

The tax under H.R. 2208 would be imposed on the disposal or long-term storage of hazardous waste (as defined under RCRA). The tax would be imposed on four different categories of wastes: (1) a $45 per ton rate for hazardous waste disposed of by landfill, in waste piles, or by surface impoundment; (2) a $25 per ton rate for ocean dumping and land treatment; (3) a $5 per ton rate for hazardous waste disposed of by underground injection; and (4) a $45 per ton rate for long-term storage of hazardous waste. A taxpayer who could establish the water content of any hazardous waste could pay an alternate $50 per ton tax on the "dry weight" of such waste. No tax would be imposed under the bill on the treatment or reclamation of hazardous waste as defined by the bill. Exemptions also would be provided for (1) surface impoundments containing treated waste water as part of a biological treatment facility, and (2) certain disposals or long-term storage of hazardous waste related to clean-up activities under CERCLA provisions.

The tax would be effective on January 1, 1986, and would expire after September 30, 1990. The Treasury Department (in consultation with EPA) would be required to report to Congress by January 1, 1987, and annually thereafter, concerning the revenues being collected by the tax and recommendations for changes (if any) in the tax.

II. PRESENT LAW

A. Tax Provisions

1. Hazardous substance response taxes and trust fund

Hazardous Substance Response Trust Fund

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (P.L. 96-510) established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous substance spills and uncontrolled hazardous waste sites.

The Hazardous Substance Response Trust Fund ("Superfund") was established by CERCLA as a trust fund in the Treasury of the United States. Amounts in the Superfund are available for expenditures incurred under section 111 of CERCLA (as enacted) in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include: (1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action; (2) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by the Federal or State governments; and (3) certain costs related to response, including damage assessment, epidemiologic studies, and maintenance of emergency response forces.[6]

Under CERCLA, there are appropriated to the Superfund: (1) amounts equivalent to amounts received in the Treasury under Internal Revenue Code sections 4611 (pertaining to the petroleum tax) and 4661 (pertaining to the tax on certain feedstock chemicals); (2) amounts recovered from responsible parties on behalf of the Superfund under CERCLA; (3) penalties assessed under title I of CERCLA; and (4) punitive damages under section 107(c)(8) of CERCLA (pertaining to damages for failure to provide removal or remedial action upon order of the President). The petroleum and feedstock chemicals taxes are scheduled to expire after September 30, 1985.

In addition to these amounts, CERCLA authorizes general revenue appropriations to the Superfund of $44 million per year for fiscal years 1981 through 1985 (i.e., an aggregate of $220 million) and, for 1985, an additional amount equal to so much of the aggregate authorized to be appropriated for 1981 through 1984 as has not been appropriated before October 1, 1984.

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[6] The Fund also may be used for payment of claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act. All moneys recovered under section 311(b)(6)(B) of the Clean Water Act are appropriated to the Superfund. These claims and moneys involve certain costs arising before the date of enactment of CERCLA.

Not more than 15 percent of the Superfund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. CERCLA further provides that claims against the Superfund may be paid only out of the Fund. If, at any time, claims against the Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they were finally determined.

The Superfund has authority to borrow for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the succeeding 12 months; advances for paying natural resource damage claims may not exceed 15 percent of such revenues. All advances must be repaid by September 30, 1985.

The Superfund is managed by the Secretary of the Treasury, who is required to report annually to Congress on the financial condition and operations of the Fund.

Petroleum tax

Present law (sec. 4611 of the Code) imposes an excise tax (the "petroleum tax") of 0.79 cent per barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States for consumption, use, or warehousing. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products is imposed on the person entering the product into the United States for consumption, use, or warehousing. If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, the tax is imposed on the user or exporter of the oil.

Domestic crude oil subject to tax includes crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil does not include oil used for extraction purposes on the premises from which it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil does not include synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass, or refined oil).

Petroleum products which are subject to tax upon being entered into the United States include crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products (and chemicals subject to the feedstock tax) have been produced in, entered into, or exported from the United States, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception for bonded petroleum products. Revenues from the petroleum tax are not paid to Puerto Rico or the Virgin Islands under the cover over provisions of section 7652 of the Code.

Present law specifies that the petroleum tax is to be imposed only once with respect to any petroleum product. Thus, anyone who is otherwise liable for the tax may avoid payment by establishing that the tax already has been imposed with respect to that product.

Amounts equivalent to the revenues from the petroleum tax are deposited in the Superfund.

The petroleum tax is scheduled to expire under present law after September 30, 1985. Present law also contains provisions which would have temporarily suspended the tax had revenues accumulated faster than a specified rate. If on September 30, 1983, or September 30, 1984, (1) the unobligated balance in the Superfund had exceeded $900 million, and (2) the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, had determined that such unobligated balance would exceed $500 million on September 30 of the following year (if no tax was imposed under section 4611 or section 4661 of the Code during the calendar year following the first date referred to above), then no tax would have been imposed during the first calendar year beginning after the first date referred to above. (As of September 30, 1984, the unobligated balance in the Superfund was $295.1 million.) Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and chemical taxes reach $1.38 billion (sec. 303 of CERCLA). (As of September 30, 1984, cumulative receipts from these taxes amounted to $0.863 billion.)

Tax on chemical feedstocks

Present law (sec. 4661 of the Code) imposes an excise tax on the sale or use of 42 specified chemical feedstocks by the manufacturer, producer, or importer thereof. These feedstocks generally are hazardous substances or may create hazardous products or wastes when used. The tax is imposed on feedstocks manufactured in the United States or entered into the United States for consumption, use, or warehousing. The tax rates are specified per ton of taxable chemical, and vary from 22 cents to $4.87 per ton. In the case of a taxable chemical which is a gas (e.g., methane), the tax is imposed on the number of cubic feet of such gas which is equivalent to 2,000 pounds on the basis of molecular weight. (See Table 1 for a list of feedstocks and applicable tax rates under present law.)

Table 1.—Present Law Excise Tax on Chemical Feedstocks

[Dollars per ton]

Chemical	Tax rate
Organic substances:	
Acetylene	4.87
Benzene	4.87
Butadiene	4.87
Butane	4.87
Butylene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87
Propylene	4.87

Table 1.—Present Law Excise Tax on Chemical Feedstocks—Continued

[Dollars per ton]

Chemical	Tax rate
Toluene	4.87
Xylene	4.87
Inorganic substances:	
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic Trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadium	4.45
Chlorine	2.70
Chromite	1.52
Chromium	4.45
Cobalt	4.45
Cupric Oxide	3.59
Cupric sulfate	1.87
Cuprous oxide	3.97
Hydrochloric acid	.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Nitric acid	.24
Phosphorous	4.45
Potassium	1.69
Potassium hydroxide	.22
Sodium dichromate	1.87
Sodium hydroxide	.28
Stannic chloride	2.12
Stannous chloride	2.85
Sulfuric acid	.26
Zinc chloride	2.22
Zinc sulfate	1.90

The tax rates on petroleum and chemical feedstocks were set to achieve a $1.6 billion Superfund program over 5 years, and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of wastes (derived from these chemicals) found in hazardous waste sites (based on data available in 1980). In addition, the feedstock chemical tax rates were limited to 2 percent of wholesale price (based on data available in 1980).

Present law provides six exemptions from the tax on feedstocks. Four of these exemptions were provided in CERCLA as enacted in 1980, and two exemptions were added by the Tax Reform Act of 1984. First, in the case of butane and methane, the tax is not imposed if those substances are used as a fuel. (If those substances are used other than as a fuel, for purposes of the tax, the person so using them is treated as the manufacturer.) Second, an exemption is provided for nitric acid, sulfuric acid and ammonia (and methane used to produce ammonia) used in the manufacture or production of fertilizer or directly applied as fertilizer. Third, present law provides an exemption for sulfuric acid produced solely as a byproduct of (and on the same site as) air pollution control equipment. Fourth, any substance is exempt to the extent it is derived from coal.

The Tax Reform Act of 1984 (P.L. 98-369) added two further exemptions to the tax on feedstocks. First, the 1984 Act provided an exemption for petrochemicals otherwise subject to the tax (i.e., acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphtalene, propylene, toluene, and xylene) which are used for the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel. (The petroleum tax continues to apply to domestic crude oil or imported petroleum products used for these purposes.) This exception applies if the otherwise taxable substance is (1) added to a qualified fuel, (2) used to produce another substance that is added to a qualified fuel, or (3) sold for either of the uses described in (1) or (2) above. Second, the 1984 Act provided that the transitory existence of cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide during a metal refining process is not subject to tax if the compound exists in the process of converting or refining non-taxable metal ores or compounds into other (or more pure) non-taxable compounds. (If a substance is removed in the refining process, tax is imposed even if the substance is later reintroduced to the refining process.) These provisions were effective as if enacted as part of CERCLA.

Under present law, if a taxpayer uses a taxable chemical prior to any sale, the tax is imposed as if the chemical had been sold. When a taxable chemical is used to manufacture or produce a second taxable chemical, an amount equal to the tax paid on the first chemical is allowed as a credit or refund (without interest) to the manufacturer or producer of the second chemical (but not in an amount exceeding the tax imposed on the second chemical). Thus, the imposition of tax more than once on the same substance is avoided.

Amounts equivalent to the revenues from the tax on feedstock chemicals are deposited in the Superfund.

The tax on chemical feedstocks is scheduled to expire, together with the petroleum tax, after September 30, 1985, with a provision for earlier termination if the unobligated balance in the Superfund had exceeded $900 million. Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and feedstock taxes reach $1.38 billion (sec. 303 of CERCLA).[7]

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[7] These termination provisions are explained in greater detail in the previous section on the petroleum tax.

2. Post-closure liability tax and trust fund

Post-closure Liability Trust Fund

In addition to the Superfund, CERCLA established the Post-closure Liability Trust Fund in the United States Treasury. The Post-closure Liability Trust Fund is to assume completely the liability, under any law (including the liability provisions of CERCLA), of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Resource Conservation and Recovery Act ("RCRA") (Title II of the Solid Waste Disposal Act).[8]

This transfer of liability to the Trust Fund may take place after (1) the owner and operator of the facility has complied with the requirements under RCRA which may affect the performance of the facility after closure, (2) the facility has been closed in accordance with the regulations and the conditions of the permit, and (3) the facility has been monitored (as required by the regulations and permit) for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur (sec. 107(k) of CERCLA). The transfer of liability is to be effective 90 days after the owner or operator of the facility notifies the Administrator of the Environmental Protection Agency (and the State, if it has an authorized program) that the required conditions have been satisfied. No liabilities have yet been transferred to the Post-closure Trust Fund under present law. In addition to payment of damages and cleanup expenses for such sites, the Trust Fund also may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons, after the period of monitoring required by RCRA, for facilities meeting the applicable transfer of liability requirements. The Post-closure Liability Trust Fund does not assume the legal liability of waste generators or transporters.

As in the case of the Superfund, claims against the Post-closure Liability Trust Fund may be paid only out of this Trust Fund. If, at any time, claims against this Trust Fund exceed the balance available for payment of those claims, then the claims are to be paid in full in the order in which they are finally determined.

The Post-closure Liability Trust Fund is subject to the same administrative provisions as the Superfund, including the right to borrow limited amounts from the Treasury as repayable advances.

Tax on hazardous wastes

Present law (sec. 4681 of the Code) imposes an excise tax (the "post-closure tax") of $2.13 per dry weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applies only to hazardous waste that will remain at the facility after the facility is closed. The tax is imposed on the owner or operator of the qualified hazardous waste disposal facility. It was intended that amounts equivalent to the revenues from this tax be deposited into the Post-closure Liability Trust Fund.

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[8] The RCRA provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits generally are required under RCRA for hazardous waste treatment, storage, and disposal facilities.

For purposes of the post-closure tax, the term hazardous waste means any waste (1) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date), and (2) that is subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect on that date. Qualified hazardous waste disposal facilities are facilities that have received a permit or have been accorded interim status under the Solid Waste Disposal Act.

The post-closure tax applies to the receipt of hazardous waste after September 30, 1983. However, if as of September 30 of any calendar year after 1983, the unobligated balance of the Post-closure Liability Trust Fund had exceeded $200 million, no tax would have been imposed during the following calendar year. Further, authority to collect the post-closure tax terminates (1) should cumulative receipts from the petroleum and chemical taxes described in the previous section reach $1.38 billion, or, (2) if earlier, after September 30, 1985 (sec. 303 of CERCLA).

B. Non-tax Provisions

1. General provisions

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") provides a statutory scheme to insure prompt response to and cleanup of releases of hazardous substances. The burden of paying for such actions is placed on the responsible party or, where the responsible party cannot be identified or held liable, on producers and users of the chemical feedstocks generally associated with the production of hazardous substances. In general, the law is designed to allow a governmental response to proceed where necessary, with the parties legally responsible for the release of hazardous substances later being held liable (without regard to fault) for damages and costs resulting from the release. To accomplish this, CERCLA created the Hazardous Substance Response Trust Fund ("Superfund"), to be financed by a combination of special environmental taxes and Federal appropriations and to be available for response actions and certain related liability claims.

Under CERCLA, the President is authorized, in the case of a release or threatened release of a hazardous substance or a pollutant or contaminant into the environment, to take whatever removal, remedial or other response action he determines to be appropriate under the National Contingency Plan (originally contained in the Clean Water Act but subsequently revised to apply to CERCLA). Releases subject to CERCLA include any release of a hazardous substance, other than workplace releases, certain nuclear releases, engine exhausts, and the normal application of fertilizer. Hazardous substances are defined as substances identified in specified sections of the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act, and the Toxic Substance Control Act, and those designated under CERCLA. Hazardous substances do not include petroleum (unless specifically designated as hazardous under these laws), or natural or synthetic gases. The Environmental Protection Agency (EPA) is authorized to designate additional substances as hazardous if they present substantial danger to the public health or welfare or to the environment.

CERCLA required the Federal government to develop a national list of sites (the National Priorities List) which are serious enough to require remedial action. This National Priorties List is required to include the 400 most hazardous sites, and is required to be updated annually. In compiling this list, the EPA identifies and evaluates hazardous sites, beginning with a preliminary assessment of available information and proceeding (where appropriate) to an actual site inspection. The sites are then ranked according to criteria relating to relative potential danger from the release or threatened release of hazardous substances into the air, surface water, or groundwater at the site, with the highest ranking sites being selected for the National Priorties List.

Sites which are listed on the National Priorities List are eligible for EPA long-term cleanup actions, using money from the Superfund. The State in which the site is located generally is required to pay 10 percent of the capital and first-year operating costs of a remedial action (50 percent or greater for State or locally owned or operated sites) and 100 percent of the operating costs in subsequent years.

As an alternative to proceeding with a Superfund financed cleanup, the EPA has authority, under section 106 of CERCLA, to initiate enforcement actions (including civil action and administrative orders) to compel responsible parties to finance cleanup activities. The EPA also has broad authority to enter into negotiations with responsible parties regarding voluntary cleanups or cash settlements. The availability of these alternatives (i.e., negotiation, enforcement, and Government-funded cleanup) is intended to permit a larger number of sites to be cleaned up than would be possible using any one method.

If a governmental cleanup is initiated, the EPA has further authority to allow the State to take a lead role in site response (cooperative agreements) or (if EPA takes the leading role) to follow various long-term cleanup strategies. The EPA also may initiate removal actions (including removal of hazardous substances, evacuation of affected persons, and other emergency measures) to prevent immediate and significant harm to human life, health, or the environment.

In addition to the cost of cleanup applications, there is authorized to be paid out of the Superfund certain unsatisfied claims for damages resulting from the release of hazardous substances; claims for injury to, or destruction of, natural resources owned or controlled by the Federal or State governments; and specified costs relating to site response or resource restoration. Payment of these claims by the Fund transfers to the Fund the right of the claimant to sue the party responsible for releasing the hazardous substance; thus, Fund representatives may attempt to recover claim payments from the responsible party or parties. There is no general provision for private damage claims against the Fund.

2. Liability provisions

Section 107 of CERCLA imposes liability for cleanup costs incurred under the National Contingency Plan, and for costs associated with natural resource damages, on any person who is or was the owner or operator of a site or the generator or transporter of hazardous substances released into the environment. A strict liability standard (i.e., regardless of negligence) applies, and only limited defenses (including acts of war, acts of God, and acts of independent third parties where the defendant exercises due care) are allowed. No liability arises with respect to releases permitted under provisions of existing Federal laws or the application of registered pesticides.

Liability under CERCLA is generally limited to $50 million per release, allowing owners and operators more readily to obtain insurance for their liability. In addition, owners and operators of vessels and offshore facilities are required to maintain evidence of financial responsibility, and the President is authorized to provide financial responsibility requirements for onshore facilities beginning in 1985.

The amounts recovered under these liability provisions are deposited in the Superfund. CERCLA also provides for certain penalties and punitive damages which are to be deposited in the fund. These include punitive damages of up to three times the amount of costs incurred as a result of the failure without sufficient cause, by a person liable for a release or threatened release of a hazardous substance, to provide proper removal or remedial action upon order of the President pursuant to the Act.

CERCLA also authorizes creation of an Agency for Toxic Substances and Disease Registry to improve data collection and otherwise assist in matters concerning toxic substances and human health.

3. Related statute: Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act ("RCRA") (Title II of the Solid Waste Disposal Act) provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits are required for treatment, storage, and disposal facilities. The Environmental Protection Agency may sue to require cleanup of an active or inactive disposal site if the site is posing an imminent and substantial hazard to public health and if there is a known responsible party. However, this provision does not provide funds for cleanup of hazardous waste disposal sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

The Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) made various amendments to RCRA. These include: prohibitions against the land disposal of specified types of waste (subject to certain EPA determinations) and against the placing of noncontainerized or bulk liquid hazardous waste in landfills; minimum technological standards and groundwater monitoring requirements for land disposal sites; special rules for generators generating between 100 and 1,000 kilograms of hazardous waste per month; and a ban on underground injection near an underground source of drinking water (with an exemption for RCRA and CERCLA cleanups). The 1984 amendments also included a new regulatory program for underground storage tanks.

4. Other statutory provisions relating to oil spills

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) established a $35 million revolving fund maintained by fines, penalties, and appropriations of general revenue. The revolving fund may be used for cleanup of releases of oil into navigable waters and restoration of accompanying natural resources. The Act also established strict joint and several liability pertaining to responsibility for cleanup expenses, and authorized the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act ("TAPAA")

The TAPAA (43 U.S.C. sec. 1651) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system ("TAPS") to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and the Fund's revenues are intended to be used to compensate for damages, including cleanup, restoration of natural resources, and economic loss, resulting from spills of oil transported through TAPS. Owners and operators are strictly liable, and the fund may seek to recover its expenses from responsible parties. Because of a $100 million ceiling to which the Fund is subject, the fee is to be suspended for such time as that maximum is achieved and maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments of the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1812). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. The fee is collected by the Internal Revenue Service, and may be reduced when the balance in the Fund reaches the $200 million cap. The Fund may be used to compensate for damages, including cleanup, property damage and loss of income and tax revenue, resulting from spills of oil produced on the Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are defined, and the Fund may seek to recover its expenses from responsible parties. Collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 (33 U.S.C. sec. 1502) established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in deepwater port operations. This fund is maintained by a $.02 a barrel fee assessed on oil loaded at a deepwater port. A spiller of deep water port oil is strictly liable for resulting damages.

Under the Deep Water Port Act Amendments of 1984 (P.L. 98-419), collection of the fee was suspended; however, collection could be reinstated by the Secretary of Transportation under certain circumstances.

III. OPERATION OF SUPERFUND PROGRAM UNDER PRESENT LAW

A. Superfund Program Activities

Since the Superfund program started operating in 1981, it has been involved mainly in conducting emergency responses ("removal actions") and in identifying and evaluating abandoned waste sites in order to implement long-term cleanup ("remedial action"). As of the end of fiscal year 1984, the Environmental Protection Agency (EPA) had identified 18,884 potentially hazardous sites in the United States. As shown in Table 2, preliminary assessments were completed at 10,767 of these sites (57 percent). Of the sites assessed, investigations were completed at 3,601 sites, and 546 were subsequently placed on the National Priorities List (NPL) based on their high degree of hazard. The EPA estimates, assuming current ranking criteria, that between 1,403 and 2,200 sites will ultimately be added to the NPL.

Table 2.—Status of Potentially Hazardous Waste Sites

[Number of sites]

Site status	Through fiscal year 1984	Projected number of sites		
		Low estimated	Middle estimate	High estimate
Listed in ERRIS [1]	18,884	22,000	NA	NA
Preliminary assessment	10,767	15,200	NA	NA
Site investigation	3,601	4,285	NA	NA
National Priorities List [2]	538	1,500	1,800	2,200

[1] The Emergency Remedial and Response Information System [ERRIS] is an inventory of potentially hazardous sites maintained by the EPA.

[2] The National Priorities List contains sites determined to require remediation. An additional 244 sites were proposed for listing in October 1984, and another 26 sites were proposed in April 1985.

Source: U.S. Environmental Protection Agency.

As shown in Table 3, of the 546 sites on the NPL, the EPA anticipates beginning initial remedial cleanup measures at 87 sites and completing cleanup at 15 sites by the end of fiscal year 1985. The EPA has implemented more removal actions (which are generally less expensive and shorter term) than it has remedial actions. By the end of FY 1985, the EPA anticipates completing 576 removal actions.

Table 3.—Superfund Program Activities

[Fiscal years]

Action	1981	1982	1983	1984	1985 [1]	Total 1981–85
Remedial [2]						
Preliminary assessment	[3] 2,454	[3] 2,454	1,891	3,968	5,215	15,982
Site inspection	[3] 870	[3] 870	550	1,311	1,380	4,981
Feasibility study						
Program-lead	20	30	84	97	69	300
Enforcement-lead	0	0	23	36	35	94
Remedial design	5	5	6	18	64	98
Remedial action	1	22	19	20	25	87
Completion	0	5	1	0	9	15
Removal [4]						
Completion	20	63	102	202	189	576

[1] Projected.
[2] Number of sites.
[3] Estimate.
[4] Number of actions.

Source: U.S. Environmental Protection Agency.

B. Hazardous Substance Response Trust Fund

Outlays

Funding for remedial and removal actions comes from the Superfund. As a result of the long start-up time required for planning site remediation projects, outlays from the Superfund have been substantially less than receipts. As shown in Table 4, outlays through fiscal year 1984 were $520.7 million, about 45 percent of the $1,151.7 million received by the Fund in this period.

No claims for injury to, or destruction or loss of, natural resources have yet been paid by the Fund. However, 57 claims for such damages, totaling $2.7 billion, have been submitted by four States to EPA. EPA has rejected the claims because they have not been presented to the responsible party and a restoration plan has not been prepared, as required by CERCLA. These claims are currently the subject of litigation.

Table 4.—Superfund Accounts, Fiscal Years 1981–1984

[In millions of dollars]

Item	1981	1982	1983	1984	Total, 1981–84
Receipts	153.0	340.8	331.6	386.6	1,212.0
Transfer from Coast Guard	6.7	0	0	0	6.7
Excise taxes	127.9	244.0	230.2	261.2	863.3
Appropriations from general fund	9.4	67.9	61.0	77.9	216.2
Interest income [1]	1.3	34.5	61.0	59.0	155.8
Recoveries	0	2.3	0.4	3.4	6.1
Outlays	8.0	79.6	1,476.8	285.3	520.7
End of year cash balance	145.0	406.2	589.9	691.3	NA
Budget obligation	40.3	180.7	230.2	465.6	916.9
Removal and remediation	30.8	149.0	175.9	366.7	722.4
Enforcement program	2.3	8.4	17.7	26.7	55.0
Research and development	4.7	13.8	6.8	10.2	35.5
Management	2.3	9.5	11.4	17.2	40.4
Interagency	0.1	0	18.4	44.8	63.5
Unobligated balance	112.0	272.8	374.1	295.1	NA

[1] Including unamortized interest.

Sources: (1) Dept. of Treasury, *Treasury Bulletin,* First quarter, Fiscal 1985, p. 210; (2) U.S. Environmental Protection Agency.

Receipts generally

The primary source of Superfund revenue has been the excise taxes on petroleum and 42 chemicals ("feedstock tax") enacted in 1980. In addition to the excise taxes, appropriations from general revenues provided about 10 percent of the Superfund's financing in the first four years of operation. Interest income has become an increasingly important source of revenue as the Fund's balance has increased (due to receipts in excess of outlays).

When the Superfund was enacted, it was envisioned that collections from parties responsible for hazardous waste sites would replenish the Trust Fund. However, cost recoveries have been small, with only $6.1 million collected through September 1984. Cost recovery proceedings are generally initiated after remediation is completed and total costs are known. The EPA estimates that cost recovery actions will generate $32 million in fiscal year 1986, $55 million in 1987, $85 million in 1988, $115 million in 1987, and $190 million in 1990.

Part of the cost of cleaning Superfund sites is paid by responsible parties directly, under consent orders and settlement agreements with the EPA, and is not recovered by the Superfund. As shown in

Table 5, private parties have agreed to expend $364 million on hazardous waste site cleanups, of which $297 million involved sites on the National Priorities List.

Table 5.—Hazardous Waste Site Settlements and Unilaterial Orders in Compliance

[Value in millions of dollars]

Site	1980	1981	1982	1983	1984	1985 [1]	Total 1980–85
National priorities list	0	34.0	12.5	99.3	146.5	4.3	296.6
Other	0.9	19.9	7.9	9.3	23.4	4.9	67.3
Total	0.9	53.9	20.4	108.6	169.9	9.1	363.9

[1] Through March 1985.

Source: U.S. Environmental Protection Agency.

Chemical feedstock and petroleum taxes

The chemical feedstock and petroleum excise taxes have generated about three-quarters of the Superfund receipts, although cumulative tax revenues are running 20 percent less than the $307 million per year rate projected in 1980. The shortfall is in part due to the economy-wide recession in the early part of the period in which the taxes have been effective. Excise tax liability has increased to $71 million per quarter, in the first two quarters of fiscal year 1984, after declining to $57 million per quarter in fiscal year 1983 (see Table 6). As shown in Table 6, the portion of the excise taxes generated from each category (petrochemicals, inorganic chemicals, and petroleum) has been extremely stable, and is remarkably close to the original estimate (65 percent from petrochemicals, 15 percent from inorganic chemicals, and 20 percent from petroleum).

Table 6.—Revenues from Feedstock and Petroleum Taxes [1]

[Dollar amounts in millions]

Taxable substance	Fiscal years—									
	1981 quarters III-IV		1982 quarters I-IV		1983 quarters I-IV		1984 quarters I-II		Total fiscal year 1981-84	
	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent
Petrochemicals	86	66.2	157	65.6	150	66.1	98	69.0	501	66.7
Inorganic chemicals	24	18.8	42	17.4	40	17.6	23	16.2	128	17.0
Petroleum	19	14.9	39	16.4	36	15.9	20	14.1	118	15.7
Unallocated	0	0.0	1	0.6	1	0.4	1	0.7	4	0.5
Total	129	100.0	239	100.0	227	100.0	142	100.0	751	100.0
Quarterly average		65		60		57	71		63	

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[1] In these data, excise taxes are allocated to the fiscal quarter in which the liability arises (which may be earlier than the quarter in which Treasury receives payment).

Source: Dept. of Treasury, Internal Revenue Service, *SOI Bulletin*, Vol. 3, No. 2, (Fall 1983), pp. 31-34; and updated information from the Statistics of Income Branch of the IRS.

The Internal Revenue Service estimates that the excise taxes, as of March 1984, were paid by 611 companies. Although the average annual chemical feedstock tax liability for 1983 was approximately $0.5 million per taxpayer, most of the revenue is collected from a small number of companies with very large production volumes. From June 1981 through March 1984, the 10 largest payers of the excise taxes accounted for approximately 47 percent of the total tax liability.

C. Post-closure Liability Trust Fund

The Post-closure Liability Trust Fund was established under the CERCLA to assume the legal liability of qualified hazardous waste disposal facilities that are properly permitted, operated, and closed under the Resource Conservation and Recovery Act. The Post-closure Liability Trust Fund is financed by a tax on hazardous waste received for disposal at qualified hazardous waste facilities. The tax rate is $2.13 per ton of hazardous waste on a "dry weight" basis. The tax was first imposed on wastes received in fiscal year 1984 (on or after October 1, 1983). Data on post-closure tax liability are available only for the first two quarters of fiscal year 1984. Post-closure tax liability was $1.3 million in the first quarter of fiscal 1984, and $1.7 million in the second quarter. Thus, based on the first two quarters of fiscal 1984, the post-closure tax is generating revenue at a rate of $6 million per year. This is considerably less than the $100 million per year that was originally anticipated.

IV. DESCRIPTION OF ADMINISTRATION PROPOSAL

(H.R. 1342)

A. Overview

The Administration proposal[9] would extend the Superfund through September 30, 1990, and provide a projected $4.5 billion in tax revenues to the fund during the extension period. These revenues would be derived primarily from (1) an extension of the taxes on petroleum and feedstock chemicals at their present law rates, and (2) a tax on the treatment, storage, disposal, and export of hazardous wastes ("waste management" tax), effective October 1, 1985. The waste management tax is intended to raise approximately two-thirds of the tax revenue under the proposal, and the rates of this tax would be adjusted (if necessary) to cover shortfalls in overall Superfund revenues during the extension period. No money would be made available to the Superfund from general revenues. Approximately $800 million of additional Fund income is projected from interest, cost recoveries, and fines, for total 5-year revenue of $5.3 billion.

The Administration proposal would delete natural resources damage claims as a permissible use of the Superfund, impose benchmark cleanup standards for Superfund sites, and make various further changes affecting the use of fund proceeds. No specific schedule for cleanup activities would be provided.

B. Hazardous Substance Superfund

Under the Administration proposal, the Hazardous Substance Response Trust Fund officially would be renamed the "Hazardous Substance Superfund," and would be placed in the trust fund subtitle of the Internal Revenue Code. The Secretary of the Treasury would continue to manage the fund and to report annually to Congress on the financial condition and operations of the fund (Code sec. 9602). The substantive trust fund provisions would generally be the same as under present law, with the following modifications.

First, under the proposal, waste management tax revenues (technically, amounts equivalent to these revenues) would be added to present law Superfund revenue sources.[10] Also, the balance of the Post-closure Liability Trust Fund, as of September 30, 1985, would be transferred to the Superfund, in conjunction with the repeal of that Trust Fund (described below).

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[9] The Administration's original proposal was introduced by Rep. Broyhill, by request, as H.R. 1342. Changes in the Administration's proposal were included in the statement of Mikel M. Rollyson, Tax Legislative Counsel, before the Senate Committee on Finance, Hearings on Reauthorization of the Hazardous Substance Response Trust Fund, April 25, 1985.

[10] Present law revenue sources include the petroleum and feedstock chemical taxes (Code secs. 4611 and 4661), amounts recovered on behalf of the fund under CERCLA (as amended), all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act, and penalties and punitive damages under the appropriate sections of CERCLA.

Second, the proposal would delete natural resource damage claims (section 111(b) of present law CERCLA) as a permitted expenditure purpose. This would leave three permitted expenditure purposes for the Superfund: (1) response costs; (2) related costs described in section 111(c) of CERCLA; and (3) compensable but unsatisfied claims under section 311 of the Clean Water Act.

Third, as under present law, the Superfund would be allowed to borrow from the Treasury, as repayable advances, amounts not exceeding estimated revenues during the next 12 months; however, such advances would not be limited (as they are under present law) to catastrophic spills. All such advances would be required to be repaid on or before September 30, 1990.

The amended trust fund provisions would be effective on October 1, 1985.

C. Tax Provisions

1. Taxes on petroleum and feedstock chemicals

The Administration proposal would continue the taxes on petroleum (Code sec. 4611) and feedstock chemicals (sec. 4661), at their present law rates, through September 30, 1990.

A special rule would provide for suspension or termination of each of these taxes if, on September 30, 1988 or 1989: (1) the unobligated Superfund balance exceeds $1.5 billion, and (2) the Treasury, after consulting with EPA, determines that this balance will exceed $1.5 billion on the following September 30th if neither of these taxes or the waste management tax (described below) are imposed during the intervening year. If these conditions are met, the tax would be suspended for one year following the date of the determination. Authority to collect the petroleum, feedstock, and waste management taxes would expire when and if Superfund receipts from sources (including tax revenues, interest, recoveries, and fines) total $5.3 billion.

2. Waste management tax

Imposition of tax

Under the Administration proposal, a tax would be imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. The term "hazardous waste" would mean any waste listed or identified under section 3001 of the Solid Waste Disposal Act (SWDA), as amended. (This portion of the SWDA is also known as the Resource Conservation and Recovery Act (RCRA)). The Treasury, in consultation with EPA, would prescribe rules relating to the imposition of tax, if any, on wastes listed under the SWDA after the date of enactment.[11]

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[11] The Administration has proposed modifying the tax to apply only to waste listed or identified as of the date of enactment (discussed below).

For purposes of the tax, a qualified hazardous waste management unit is defined as (1) the smallest area of land in or on which hazardous waste is placed or, (2) a structure on or in which hazardous waste is placed, provided that such area or structure isolates hazardous waste within a qualified hazardous waste management facility and is required to obtain interim status or a final permit under Subtitle C of the SWDA. A qualified waste management facility is defined as any facility (as defined under Subtitle C of the SWDA) which has received a permit or has been accorded interim status under section 3005 of the SWDA (or an equivalent State program authorized under section 3006 of that Act). This distinction between units and facilities means that tax would not necessarily be imposed at a qualified facility until hazardous waste is received at a specific unit that isolates hazardous wastes within the overall facility.

The terms "treatment", "storage", and "disposal" would be defined as in section 1004 of the SWDA. The term "ocean disposal" would be defined as the incineration or dumping of hazardous waste over or into ocean waters or certain waters described in the Marine Protection Research and Sanctuaries Act of 1972.

Tax rates

Statutory rates.—The Administration's proposed waste management tax, as included in H.R. 1342, would be imposed at two distinct rates, depending on the treatment or disposal method employed for the hazardous waste.[12]

For hazardous waste received in a landfill, surface impoundment, waste pile, or land treatment unit[13] (that meets the definition of a qualified hazardous management unit), the tax would be imposed at a rate of $9.80 per ton for fiscal year 1986. This rate would be "phased up" in each succeeding fiscal year, reaching a maximum rate of $16.32 for fiscal year 1990 as well as any 1991 extension period (discussed below).

For hazardous waste exported from the United States, received for transport from the United States for purposes of ocean disposal, or received at a qualified hazardous waste management unit other than a landfill, surface impoundment, waste pile, or land treatment unit, the tax rate would be $2.61 per ton for fiscal year 1986, phasing up to $4.37 per ton in fiscal 1990 (and any 1991 extension period).

Rate adjustments.—In addition to the phase-up of rates described above, the Administration proposal calls for adjustments in the waste management tax rates, beginning in 1988, to cover any shortfalls of Superfund revenues from all sources (including the petroleum, feedstock and waste management taxes, recoveries, penalties, and interest). These adjustments would be made according to a series of statutory formulas. Each fiscal year of the reauthorization period, aggregate Superfund revenues would be compared to preset "projected revenue amounts" (see Table 7). The waste management tax rates would then be increased, beginning in 1988, to cover overall Superfund revenue shortfalls for the year which is two years earlier than the year in question (i.e., 1988 tax rates would compensate for 1986 shortfalls, and so on), with a final adjustment in 1990-91 in order to meet the original 5-year revenue targets. The formulas in the Administration proposal are intended to ensure that revenue targets are met.

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[12] The Administration has proposed modifying this provision to impose tax at four different rates: (1) a rate of 25 cents per ton on hazardous waste received at waste-water treatment facilities; (2) a $5 per ton rate for hazardous waste received at deep well injection facilities; (3) a $35 per ton rate (phasing up to $40 per ton) on hazardous waste received at landfills, surface impoundments (other than impoundments contained in waste water or deep well injection facilities), waste piles or land treatment units; and (4) a $6 per ton rate (phasing up to $7.80 per ton) on hazardous waste received at all other permitted units, as well as hazardous waste received for ocean disposal or exported from the U.S. (discussed below).

[13] These terms would be defined as under EPA regulations issued pursuant to sections 3004 and 3005 of the SWDA.

Table 7.—Projected Superfund Revenues For Purpose of Implementing Rate Adjustments Under Administration Proposal

[In millions of dollars]

Fiscal Year	Projected overall Superfund revenues
1986	$978
1987	989
1988	1,035
1990	1,093
1991	1,205

As a final measure to achieve revenue targets, the proposal allows for a maximum 6-month extension of the tax, at 1990 rates, if aggregate receipts for the period from October 1, 1985 through September 30, 1990 are less than $5.2 billion.

Exemptions

Two full exclusions from the waste management tax would be provided under the Administration proposal. First, an exclusion would be provided for the treatment, storage, or disposal of any hazardous waste pursuant to a removal or remedial action under CERCLA, where (1) the response action has been selected or approved by EPA, and (2) the release, or threatened release, of the substances which caused the response action occurred before October 1, 1985.[14] Second, hazardous waste generated at a federal facility, and subsequently received at a qualified hazardous waste management unit or exported from the United States, would be exempt from tax. The Administration proposal does not provide an exemption for the treatment of hazardous wastes.

Procedure and administration

Imposition of tax.—Generally, the tax would be imposed on the owner or operator of a qualified hazardous waste management unit. In the case of ocean disposal, tax would be imposed on the owner or operator of the vessel or aircraft that disposes of hazardous waste in or over the ocean. In the case of export, tax would be on the exporter of hazardous waste.

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[14] The Administration has proposed expanding this exemption to include treatment, storage, or disposal pursuant to RCRA corrective actions.

Credit for tax paid.—The proposal includes a mechanism for credits or refunds where tax is paid with respect to hazardous waste and the waste is subsequently received at another qualified unit, received for transport for ocean disposal, or exported from the United States (i.e., where a second taxable event takes place). The amount of this credit is limited to the product of (1) the lesser of (a) the quantity of hazardous waste transferred, or (b) the quantity of hazardous waste on which the tax was previously paid, multiplied by (2) the lesser of (a) the rate of tax payable by the party receiving the hazardous waste, or (b) the rate of tax previously paid on the waste. These limitations prevent a refund for an amount greater than the tax originally paid.

Credits or refunds would be made, without interest, to the person who paid the original tax, following the same procedures as would be used for overpayments of tax.

Information reporting.—Persons subject to the waste management tax would be required to submit to the Treasury such information as may be required in regulations, including (but not limited to) information which is required to be provided to EPA under the SWDA. A penalty of $25 per day (but not to exceed $25,000) would be imposed for failure to provide such information, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The proposal specifies that this is in addition to any other penalty provided by law.

Effective date

The waste management tax would be effective for hazardous waste received or exported after September 30, 1985.

Termination date

The tax would expire after September 30, 1990, unless the Treasury determines that total Superfund receipts for the period October 1, 1985 through September 30, 1990 are less than $5.2 billion. In that case, the tax would terminate no later than March 31, 1991 (at the 1990 rates). Authority to collect the tax (together with the petroleum and feedstock chemical taxes) would expire earlier than September 30, 1990, when and if Superfund receipts during the reauthorization period (including interest and recoveries) total $5.3 billion.

3. Proposed Administration modifications to waste management tax

In testimony before the Senate Committee on Finance,[15] the Treasury Department recommended the following modifications to its originally proposed waste management tax, as included in H.R. 1342.

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[15] Senate Committee on Finance, Hearings on Reauthorization of the Hazardous Substance Response Trust Fund (Superfund), April 25, 1985 (Statement of Mikel M. Rollyson, Tax Legislative Counsel).

Definition of hazardous waste.—The Treasury Department recommended that the tax be imposed only on hazardous wastes listed or identified under section 3001 of the SWDA as effective on the date of enactment of the proposal, with no administrative procedure for prescribing tax rules on subsequently listed wastes. (A tax on such wastes could be imposed by subsequent Congressional action.)

Tax rates.—The Treasury Department recommended replacing the two-rate structure of its originally proposed tax with a four-rate structure, as follows:

(1) A tax rate of 25 cents per ton on hazardous waste received at wastewater treatment facilities.

(2) A $5 per ton tax rate on hazardous waste received at deep well injection facilities.

(3) An initial $35 per ton tax rate, phasing up to $40 per ton over the 5-year reauthorization period, on hazardous waste received at landfills, surface impoundments (other than impoundments contained in wastewater or deep well injection facilities), waste piles, or land treatment units.

(4) An initial $6 per ton tax rate, phasing up to $7.80 per ton over the reauthorization period, on hazardous waste received at all other permitted units, as well as on hazardous waste received for ocean disposal or exported from the United States.

These rates would be adjusted, if necessary, to compensate for shortfalls in overall Superfund revenues, using the formulae provided in H.R. 1342.

Exemption for RCRA corrective actions.—The Treasury Department recommended expanding the exclusion for treatment, storage, and disposal of any hazardous waste pursuant to CERCLA response actions selected or approved by the EPA (as contained in H.R. 1342), to encompass corrective actions ordered pursuant to RCRA. Both the RCRA and CERCLA exemptions would be limited to waste generated prior to the enactment of the proposed legislation.

D. Repeal of Post-closure Liability Tax and Trust Fund

The Post-closure Liability Trust Fund and the associated waste disposal tax (Code secs. 4681 and 4682) under present law would be repealed, effective October 1, 1985. Amounts in the Post-closure Trust Fund at that time would be transferred to the Superfund (as described above).

E. Non-tax Provisions Affecting the Hazardous Substance Superfund

In addition to the tax and trust fund provisions described above, the Administration proposal would make various changes in the non-tax portions of CERCLA. Aspects of the proposal most likely to affect the uses of Superfund proceeds include the following matters:

Scope of activities.—As under present law, the proposal would concentrate Superfund resources on hazardous waste sites (principally, abandoned and uncontrolled sites); municipal and industrial waste sites with problems; and sites governed by RCRA but owned by insolvent companies. However, the proposal also includes a "safety valve" allowing the President to direct response to any emergency hazardous substance release using Superfund proceeds.

Cleanup standards.—The proposal would establish benchmark cleanup standards for Superfund sites. In general, these standards set levels of protection equal to those established by other environmental statutes, and are intended to promote permanent cleanup solutions at Superfund sites.

State responsibilities.—The State "matching share" of capital cleanup costs would be increased from 10 to 20 percent (from 50 to 75 percent for State-operated sites). However, the proposal also would allow States to enact taxes similar to the Superfund taxes (this is preempted under present law), and allow certain State enforcement costs to be eligible for funding.

Enforcement.—Enforcement provisions would be strengthened in several ways: including an increase in civil and criminal penalties; a provision for imposition of real property liens on responsible parties; and delay of contribution suits between potentially liable parties until after enforcement actions are judged or settled.

Community involvement.—The proposal includes a statutory requirement that affected citizens be notified of proposed cleanup actions, and be given an opportunity to comment.

V. DESCRIPTION OF H.R. 5640 AS PASSED BY THE HOUSE IN 1984

A. Hazardous Substance Superfund

H.R. 5640 (98th Congress), which was passed by the House on August 10, 1984,[16] would have redesignated the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund" and would have continued and expanded the Superfund, by allocating to the Fund amounts equivalent to the revenues derived from expanded taxes on petroleum and feedstock chemicals (discussed below). The bill also would have authorized general revenue appropriations to the Fund of an additional $421 million for fiscal year 1986, $421 million for fiscal year 1987, $496 million for fiscal year 1988, $496 million for fiscal year 1989, and $496 million for fiscal year 1990 (an aggregate of $2.3 billion), plus, for each such fiscal year, an amount equal to the aggregate amount authorized but not yet appropriated for prior years. Combined tax and general revenues authorized to be appropriated to the Fund for fiscal years 1985 through 1990 were estimated to be $10.1 billion. Other amounts allocated to the Fund under present law (including penalties, punitive damages, and amounts recovered on behalf of the Fund) were not affected by the bill.

Under H.R. 5640, the expenditure purposes of the Superfund were to be amended to conform to the expanded list of Superfund activities under section 111(c) of CERCLA, as amended by the bill. These included emergency relief and health effects studies; preparing toxicological profiles of certain hazardous substances; and evaluating potential hazards posed by facilities pursuant to petitions filed by any person. However, fund amounts would no longer have been available for the payment of damage claims for injury to, or destruction or loss of, natural resources owned or controlled by the Federal or State governments as a result of a release or threat of release of a hazardous substance, as presently authorized under section 111(a)(3) of CERCLA.

Under the bill, amounts in the Superfund were to be made available for cleanup actions in connection with leaking underground storage tanks that store petroleum or petroleum products. Amounts in the Fund also would have been available for expenditures incurred in connection with releases of petroleum (but not natural or synthetic gas) that may present a significant risk to human health. The bill would have established a separate account in the Fund for these expenditures. The amount expended from the account could not have exceeded $850 million plus interest, recoveries, and fines, and was required to be funded out of amounts appropriated from general revenue. No more than $850 million of such appropriations could have been placed in the account through fiscal year 1990. This account was also to have authority to borrow limited amounts from the primary Superfund. No revenues from the petroleum or feedstock taxes were to be placed in this account other than through this borrowing authority. Additionally, no Superfund amounts, other than amounts in the special account, could have been expended for the purpose of responding to such releases of petroleum or petroleum products to which the Superfund's authority applied as a result of the petroleum-related amendments of Title I of the bill, unless such response also qualified for Superfund expenditures under other provisions of CERCLA.

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[16] The 98th Congress expired without further action being taken on this bill. See also House Committee on Ways and Means Report (H.R. Rep. No. 98-890, Part 2, August 8, 1984) for a detailed description of the tax and trust fund provisions of H.R. 5640 as passed by the House (other than the floor amendment relating to the Comprehensive Oil Pollution Liability Trust Fund).

H.R. 5640 would have continued the present law provisions regarding administration of the Superfund, including the authorization to borrow limited amounts from the Treasury as repayable advances for the purpose of responding to catastrophic spills. Any such advances were required to be repaid before September 30, 1990. The bill also would have transferred the trust fund provisions to the Internal Revenue Code.

These amendments would have been effective on January 1, 1985.

B. Tax Provisions

1. Excise tax on petroleum

H.R. 5640 would have increased the present law environmental excise tax on petroleum from 0.79 cent per barrel tax to 7.86 cents per barrel, effective January 1, 1985. This tax was to apply through September 30, 1990. Thus, the bill would have repealed the termination provisions of present law (sec. 4611(d)), which terminate the tax if the unobligated balance in the Superfund exceeds specified amounts, and section 303 of CERCLA, which provides for termination of the environmental excise taxes when aggregate tax collections exceed $1.38 billion.

Under the bill, the petroleum tax would have increased to 9.65 cents per barrel if a tax on the disposal of hazardous substances ("waste-end tax"), was not enacted by July 1, 1986. This increase in the petroleum tax rate would have been effective on January 1, 1987.

2. Excise tax on chemical feedstocks

Tax rates

H.R. 5640 would have extended and expanded the present law environmental excise tax on chemical feedstocks. In particular, the bill provided that specified organic and inorganic substances sold by the manufacturer, producer, or importer were to be taxed in accordance with the following table (Table 8):

Table 8.—Comparison of Tax Rates on Feedstock Chemicals Under Present Law and H.R. 5640

[Dollars per ton before any adjustment for inflation]

Chemical	Present law	H.R. 5640			
		1985	1986	1987	1988 and thereafter
Organic substances:					
Acetylene	4.87	29.91	30.00	30.00	30.00
Benzene	4.87	6.60	8.80	9.90	13.20
Butadiene	4.87	9.79	13.05	14.69	19.58
Butane	4.87	4.87	5.60	6.30	8.40
Butylene	4.87	5.15	6.87	7.73	10.30
Coal-derived light oils	0	5.02	6.69	7.53	10.04
Coal tars	0	1.78	2.37	2.67	3.56
Ethylene	4.87	6.89	9.19	10.33	13.78
Methane	3.44	3.44	3.44	3.44	4.00
Napthalene	4.87	6.89	9.19	10.33	13.78
Propylene	4.87	5.87	7.83	8.80	11.74
Toluene	4.87	5.19	6.92	7.78	10.38
Xylene	4.87	10.65	14.05	16.75	[1] 22.33
Inorganic substances:					
Aluminum sulfate	0	3.52	4.69	5.28	7.04
Aluminum phosphide	0	30.00	30.00	30.00	30.00
Ammonia	2.64	2.64	3.52	3.96	5.28
Antimony	4.45	30.00	30.00	30.00	30.00
Antimony trioxide	3.75	30.00	30.00	30.00	30.00
Arsenic	4.45	30.00	30.00	30.00	30.00
Arsenic trioxide	3.41	12.97	17.46	19.46	25.94
Asbestos	0	5.76	7.68	8.64	11.52
Barium sulfide	2.30	7.13	9.51	10.70	14.26
Bromine	4.45	9.73	12.97	14.59	19.46
Cadmium	4.45	30.00	30.00	30.00	30.00
Chlorine	2.70	3.05	4.07	4.57	6.10
Chromite	1.52	1.52	1.52	1.52	1.70
Chromium	4.45	30.00	30.00	30.00	30.00
Cobalt	4.45	30.00	30.00	30.00	30.00
Copper	0	23.60	30.00	30.00	30.00
Cupric Oxide	3.59	30.00	30.00	30.00	30.00
Cupric sulfate	1.87	23.18	30.00	30.00	30.00
Cuprous oxide	3.97	30.00	30.00	30.00	30.00
Hydrochloric acid	.29	.94	1.25	1.41	1.88
Hydrogen fluoride	4.23	23.50	30.00	30.00	30.00
Lead	0	8.27	11.03	12.41	16.54
Lithium carbonate	0	30.00	30.00	30.00	30.00
Managanese	0	22.69	30.00	30.00	30.00
Mercury	4.45	30.00	30.00	30.00	30.00
Nickel	4.45	30.00	30.00	30.00	30.00
Nitric acid	.24	3.05	4.07	4.57	6.10

Table 8.—Comparison of Tax Rates on Feedstock Chemicals Under Present Law and H.R. 5640—Continued

[Dollars per ton before any adjustment for inflation]

Chemical	Present law	H.R. 5640			
		1985	1986	1987	1988 and thereafter
Phosphoric acid	0	7.65	10.20	11.48	15.30
Phosphorous	4.45	6.65	6.65	6.65	6.65
Potassium dichromate	1.69	15.03	20.04	22.54	30.00
Potassium hydroxide	.22	9.83	13.11	14.75	19.66
Selenium	0	30.00	30.00	30.00	30.00
Sodium dichromate	1.87	18.48	24.64	27.72	30.00
Sodium hydroxide	.28	2.82	3.76	4.23	5.64
Stannic chloride	2.12	30.00	30.00	30.00	30.00
Stannous chloride	2.85	30.00	30.00	30.00	30.00
Sulfuric acid	.26	.78	1.04	1.17	1.56
Uranium oxide	0	30.00	30.00	30.00	30.00
Vanadium	0	30.00	30.00	30.00	30.00
Zinc	0	12.48	16.64	18.72	24.96
Zinc chloride	2.22	10.55	14.07	15.83	21.10
Zinc oxide	0	14.43	19.24	21.65	28.86
Zinc sulfate	1.90	8.30	11.07	12.45	16.60

[1] Rate drops to $15.40 for 1989 and 1990.

Beginning in 1986, the rates specified in the table were to be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year was to be the percentage by which the average producer price index for basic organic chemicals of the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeded the comparable average of the index for the 12 months ending in September 1984. In the case of inorganic substances, the inflation adjustment for any year was to be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeded the comparable average for the 12 months ending in September 1984. Tax rates would not have been reduced below the levels shown in Table 8 even if the producer price index declined.

The rates provided for in the bill were generally determined by taxing each substance at the lesser of $30 per ton or a specified percentage of its estimated 1985 selling price. The percentages used for this purpose were 1.5 percent in 1985, 2 percent in 1986, 2.25 percent in 1987, and 3 percent in 1988 and subsequent years. The substances subject to the environmental excise tax were substances that (1) have been found at waste sites, (2) are feedstocks used in producing substances found at those sites, or (3) are used in manufacturing processes that generate hazardous wastes.

For purposes of the feedstocks tax, H.R. 5640 specified that xylene was to include separated isomers of xylene only in the case of imported or exported xylene. The bill further would have repealed the present law tax on xylene for periods before January 1, 1985. Manufacturers, producers and importers of xylene who paid the tax under prior law would have been permitted to obtain a refund of those taxes together with interest. To offset the resulting loss to the Superfund, the tax rates on xylene shown in Table 8 incorporated an increase over the rates that would otherwise apply, in order to recapture the tax liability that had been expected under prior law for periods before 1985.

Exemptions

H.R. 5640 would have repealed the present law exemption for coal-derived substances.

The bill would have modified the present law exception for specified nonferrous metallic compounds which have a transitory existence during metal refining or smelting processes. The bill would have applied that rule to all metallic compounds and barium sulfide, rather than the six compounds specified in present law.

The bill would have retained the present law exemptions for petrochemical feedstocks used in the production of fertilizer or used as fertilizer and for sulfuric acid produced as a byproduct of pollution control equipment. A conforming amendment would have been made to the fertilizer exemption to reflect the addition of phosphoric acid to the list of taxable substances.

The bill also provided that the environmental excise tax on feedstocks was not to apply to feedstocks that are exported from the United States. In particular, the bill would have exempted from tax any taxable substance that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export. If the purchaser cannot certify that a substance will be exported, or if a tax has otherwise been paid on the exported substance, the exporter could have claimed a refund or credit for the amount of the tax previously paid.

Generally these amendments to the environmental excise tax on chemicals would have taken effect on January 1, 1985.[17]

Alternative tax rates if tax on hazardous waste not enacted

Under the House bill, if a tax on hazardous waste was not enacted by July 1, 1986, increased tax rates on petroleum and chemical feedstocks would have taken effect on January 1, 1987. In this event, the petroleum tax would have increased to 9.65 cents per barrel and the tax on feedstocks would have increased to the rates per ton indicated in the following table (Table 9):

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[17] Under a transitional rule, the rates specified in present law for organic substances would have continued to apply through 1987 to any company which had at least 100 employees who are owners of the company on August 1, 1984, if substantially all of the common stock of that company was owned by employees, officers, directors, or their spouses, on that date; if this stock ownership came about as a result of an employee buyout or purchase that occurred in December, 1983; and if the parent company had headquarters in Odessa, Texas. These present law rates would have been available only with respect to production from facilities which the company or subsidiary owned on August 1, 1984. This transitional rule also applied to organic substances produced by subsidiaries owned by such a company on August 1, 1984.

Table 9.—Chemical Feedstock Tax Rates Under H.R. 5640 if a Waste Disposal Tax Was Not Adopted

[Dollars per ton before any adjustment for inflation]

Chemical	1987	1988–89	1990
Organic substances:			
Acetylene	35.00	35.00	35.00
Benzene	13.20	15.40	17.60
Butadiene	19.58	22.84	26.11
Butane	8.40	9.80	11.20
Butylene	10.30	12.02	13.73
Coal-derived light oils	10.04	11.71	13.39
Coal tars	3.56	4.15	4.75
Ethylene	13.78	16.08	18.37
Methane	4.00	4.67	5.33
Napthalene	13.78	16.08	18.37
Propylene	11.74	13.70	15.65
Toluene	10.38	12.11	13.84
Xylene	21.30	21.77	20.53
Inorganic substances			
Aluminum sulfate	7.04	8.21	9.35
Aluminum phosphide	35.00	35.00	35.00
Ammonia	5.28	6.16	7.04
Antimony	35.00	35.00	35.00
Antimony trioxide	35.00	35.00	35.00
Arsenic	35.00	35.00	35.00
Arsenic trioxide	25.94	30.26	34.59
Asbestos	11.52	13.44	15.36
Barium sulfide	14.26	16.64	19.01
Bromine	19.46	22.70	25.95
Cadmium	35.00	35.00	35.00
Chlorine	6.10	7.12	8.13
Chromite	1.70	1.98	2.27
Chromium	35.00	35.00	35.00
Cobalt	35.00	35.00	35.00
Copper	35.00	35.00	35.00
Cupric sulfate	35.00	35.00	35.00
Cuprous oxide	35.00	35.00	35.00
Hydrochloric acid	1.88	2.19	2.51
Hydrogen fluoride	35.00	35.00	35.00
Lead	16.54	19.30	22.05
Lithium carbonate	35.00	35.00	35.00
Manganese	35.00	35.00	35.00
Mercury	35.00	35.00	35.00
Nickel	35.00	35.00	35.00
Nitric acid	6.10	7.12	8.13
Phosphoric acid	15.30	17.85	20.40
Phosphorous	7.59	7.59	7.59
Postassium dichromate	30.06	35.00	35.00
Postassium hydroxide	19.66	22.94	26.21
Selenium	35.00	35.00	35.00

Table 9.—Chemical Feedstock Tax Rates Under H.R. 5640 if a Waste Disposal Tax Was Not Adopted—Continued

[Dollars per ton before any adjustment for inflation]

Chemical	1987	1988–89	1990
Sodium dichromate	35.00	35.00	35.00
Sodium hydroxide	5.64	6.58	7.52
Stannic chloride	35.00	35.00	35.00
Stannous chloride	35.00	35.00	35.00
Sulfuric acid	1.56	1.82	2.08
Uranium oxide	35.00	35.00	35.00
Vanadium	35.00	35.00	35.00
Zinc	24.96	29.12	33.28
Zinc chloride	21.10	24.62	28.13
Zinc oxide	28.86	33.67	35.00
Zinc sulfate	16.60	19.37	22.13

These rates generally were determined to equal the lesser of (1) a percentage of estimated 1985 selling price equal to 3 percent in 1987, 3.5 percent in 1988 and 1989 and 4 percent in 1990, and (2) a cap equal to $35 per ton. These rates were to be indexed for inflation under the method applicable to the pre-1987 tax.

The conditional increase of tax rates if a waste-end tax was not enacted was intended to compensate for the $1.2 billion in revenue which the Committee anticipated would be raised, prior to September 30, 1990, by a tax on hazardous waste. Implementation of the alternative tax rates described above would not have affected the exceptions to, or termination date of, the petroleum or feedstock taxes.

3. Study of tax on imported chemical derivatives

H.R. 5640 also would have directed the Treasury Department, in consultation with the International Trade Commission, to submit to the Committee on Ways and Means and the Committee on Finance by April 1, 1985, a study of alternatives for taxing imported chemical derivatives. This study was to examine the probable economic effects of the increased feedstock tax on U.S. manufacturers of substances derived from taxed feedstocks. The study was also to address the legality of taxing imported derivatives under the General Agreement on Tariffs and Trade (GATT). Finally, the study was to evaluate the administrative feasibility of a tax on imported derivatives, including substances that would be subject to the tax, the method for determining the tax rate on these substances, and the mechanism for collecting and enforcing the tax.

4. Study of tax on hazardous waste

The bill would have required the Secretary of the Treasury to submit to the Committee on Ways and Means and the Committee on Finance, by April 1, 1985, proposals for a tax on hazardous wastes. These proposals were to be presented in legislative form, and were to be designed to discourage the disposal of hazardous wastes in environmentally unsound ways.

C. Repeal of Post-closure Tax and Trust Fund

H.R. 5640 would have repealed the tax on hazardous wastes under section 4681 of the Code, effective on October 1, 1983, and terminated the Post-closure Liability Trust Fund as of that date. Refunds (with interest) were to be made to taxpayers who paid taxes on hazardous wastes under section 4681.

D. Non-Tax Provisions Affecting the Hazardous Substance Superfund

Overview

As discussed above, H.R. 5640 would have extended the funding of the Superfund for five years at significantly increased levels. This increase in funding was required primarily by an increase in the number of abandoned hazardous waste sites to be cleaned up under the Superfund program. The non-tax provisions of H.R. 5640 that would have affected the resources available to the Superfund and the demands on the Superfund are outlined below.

Mandatory cleanup schedule

As part of the expanded Superfund program, H.R. 5640 would have directed the EPA to place no fewer than 1,600 sites on the National Priorities List by January 1, 1988. (The EPA estimated that the Fund provided under present law was adequate to cleanup at most 170 sites.) The bill further would have required the EPA to initiate remedial investigations and feasibility studies for such sites on a regular schedule, beginning as of the date of enactment. Finally, the bill would have required EPA to begin on-site work at no fewer than 150 sites each year.

When EPA cooperates with States in the cleanup of hazardous waste sites, the bill would have permitted States to apply the administrative costs of running their own Superfund programs toward their matching share requirements for response costs (generally 10 percent of such costs); additionally, the bill would have clarified that nothing in CERCLA is to be interpreted to preempt the authority of the States to impose taxes to support State Superfund programs. The bill further would have specified that the 90/10 Federal/State matching share formula was to apply to long-term operation and maintenance costs.

Amendments to response and liability provisions

H.R. 5640 would have clarified that liability for abatement orders and cleanup costs under Sections 106 and 107 of CERCLA was to be strict, joint and several. Under this rule, each defendant generally would have been liable for the full amount of any combined damages unless the defendant could establish, by a preponderance of the evidence, that the harm caused by a release or threatened release was divisible, (in which case the defendant would have been liable for only his portion of such harm). In addition to these changes, the bill would have clarified the EPA's authority to recover prejudgment interest in cost recovery actions, provided and that EPA response actions may be reviewed only in the context of cost recovery enforcement actions or civil actions under section 106, and would have made certain other adjustments and clarifications to the CERCLA response and liability provisions. Amounts recovered under these provisions would have been added to the Hazardous Substance Superfund.

Finally, H.R. 5640 would have established requirements concerning the cleanup of abandoned hazardous waste facilities owned or operated by the Federal Government. The bill would have required each relevant agency or department to identify all such facilities, establish a schedule for the cleanup of such facilities, and implement final cleanup plans. The EPA Administrator would have had the ultimate responsibility for ensuring that the bill's requirements were met and was to be empowered to bring legal action against an agency or department that failed to comply with the law.

Citizens' suits

H.R. 5640 would have allowed any person who has an interest adversely affected to bring a suit against the administrator of the EPA, alleging failure to perform any act or duty under CERCLA (as amended by the bill) that is not discretionary with the Administrator. The court would have jurisdiction to order the EPA Administrator to perform such act or duty.

The bill also would have allowed affected persons to sue parties responsible for creating a waste site to compel such parties to clean up the site if it posed an imminent and substantial endangerment to human health.

The bill provided that citizens' suits (other than suits against the EPA Administrator) could not be brought under certain circumstances where the EPA has commenced and is diligently pursuing equivalent actions, or where response actions or consent decrees (in the case of endangerment actions) are in progress with respect to the alleged violation or endangerment. Additionally, the EPA Administrator, if not named as a party, could have intervened in any citizens' suit as a matter of right.

The bill would have allowed the award of reasonable attorneys' fees to prevailing parties in a citizens suit.

In addition to allowing citizens' suits, H.R. 5640 would have encouraged citizen participation by establishing a mandatory program for public participation in remedial decisions by EPA and by providing authority for the EPA Administrator to use Superfund money to make grants to enable affected communities to obtain expert advice and technical assistance in commenting on the Agency's proposed plans for action.

Relief for injured individuals

H.R. 5640 would have added two basic provisions pertaining to relief of injured individuals. First, the bill would have required the Agency for Toxic Substances and Disease Registry, created under CERCLA and administered by the Department of Health and Human Services, to prepare toxicological profiles for no fewer than 100 chemicals most frequently found, or posing the greatest risks, at Superfund sites. These profiles, which were to be based primarily on a compilation of existing literature and limited testing where necessary, would have been required to be prepared at the rate of 25 per year. Monies for these studies would have come from the Superfund.

Second, the bill would have provided any individual or group of individuals the right to petition the EPA Administrator for health effects studies and emergency relief in cases of dangerous exposure to hazardous substances which were released from dump sites or in the course of a disaster-like chemical fire in response to which EPA had taken a removal action. If the petitioners were able to demonstrate (e.g., through submission of laboratory tests of drinking water) that they were being exposed to a hazardous substance, the Administrator would have been required to determine whether such substances could pose a significant risk to their health and whether it is reasonably likely that such substances come from a covered facility. If the Administrator made such determinations, the bill would have required the EPA to conduct a scientific hazardous substance exposure evaluation study of the affected individuals, to be completed within a 6-month period. If the study showed that an exposure to hazardous substances actually does pose a significant risk, EPA would have been required immediately to reduce such exposure to safe levels. Actions by the Administrator would have included providing alternative drinking water or, in the most egregious cases, emergency relocation.

Leaking underground storage tanks

H.R. 5640 included extensive provisions regarding the regulation of leaking underground storage tanks. Under the bill, EPA would have been required to develop a regulatory program containing such requirements as may be necessary to protect human health and the environment in the case of leaking tanks. Such regulations could have included, but need not have been limited to, design standards for new tanks and monitoring and corrective action requirements for new as well as existing tanks. In addition, to abate threats to public health, Superfund money would be have been made available to clean up leaks from underground storage tanks, including those tanks which store petroleum or petroleum products.

E. Comprehensive Oil Pollution Liability Trust Fund

Under an amendment offered by Rep. Breaux, and adopted on the floor of the House, H.R. 5640 would have established a separate $200 million fund, the Comprehensive Oil Pollution Liability Trust Fund, to provide a system of liability and compensation for oil spill damage and removal costs and related purposes. This Trust Fund was to be a separate entity and was to be funded primarily by a 1.3 cents per barrel tax on oil (including crude oil or any fraction or residue therefrom) which was (1) received at a United States refinery, (2) entered into the United States for consumption, use, or warehousing, or (3) produced from a U.S. well and subsequently used in or exported from the United States. (This fee was to be separate from, or to be additional to, any tax imposed on the crude oil under section 4611 or the Code.) Only one fee was to be imposed with respect to any particular oil. The fee was to remain in effect at any time when the amount in the Trust Fund was less than $200 million. Additionally, if the Trust Fund exceeded $300 million, income from securities held by the Trust Fund was to be rebated to owners of oil who contributed fees to the Trust Fund (on a pro rata basis).

The Secretary of Transportation was to promulgate regulations establishing procedures for collection of the 1.3 cents per barrel fee. The Secretary of Transportation also would also have been responsible for designating spills eligible for payment of damage claims under the fund and for administering the trust fund, which would have been established as a nonprofit corporate entity. Persons failing to pay the fee were to be liable for civil penalties not exceeding $10,000.[18]

Amounts in the oil spill liability trust fund were to be available for (1) immediate payment of costs incurred in cleaning up or preventing oil pollution ("removal costs"), including costs incurred by government officials in carrying out oil pollution cleanup requirements under the Federal Water Pollution Control Act, the Intervention on the High Seas Act, and the Deepwater Port Act, (2) payment of reasonable costs incurred by a governmental trustee of natural resources in assessing damaged resources and preparing a plan to restore damaged resources or acquire replacement resources, (3) payment of otherwise uncompensated damages for economic loss sustained by any United States claimant (including private parties) as a result of oil pollution or the substantial threat of oil pollution, (4) payment of certain contributions to the International Oil Pollution Compensation Fund, and (5) administrative costs. The liability of the fund was not to exceed $100 million for any single incident. In addition, no claim (other than a claim for removal costs) could have been paid to the extent that such payment would reduce the amount in the fund below $30 million; however, the fund was entitled to borrow money necessary to pay a claim.

Damages for economic loss (item (3) above) which could have been claimed under the bill included: damages for injury to, or destruction of, real or personal property; loss of subsistence use of natural resources; and loss of profits or impairment of earning capacity for a two-year period beginning on the date the claimant first suffered such loss, but only if 25 percent or more of the claimant's earnings (or, in the case of seasonal activities, 25 percent of seasonal earnings) were derived from the affected activities. A claimant would generally have had the option of recovering damages or removal costs (item (1) above) either from the responsible party or from the trust fund, which could then recover from the responsible party. Liability of responsible parties was to be on a joint and several basis, with defenses only for acts of war, civil war or insurrection, and certain exceptional natural phenomena. However, for any responsible party which was not at fault under the bill, liability was to be limited to specified amounts. For vessels carrying oil in bulk, other than inland barges, this limit was equal to the greater of $1 million or $400 per gross ton, to a maximum of $40 million.

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[18] In addition to the fee, there were to be deposited in the fund amounts recovered or collected by the fund and amounts transferred from the funds established under the Deepwater Port Act and the OCS Lands Act Amendments of 1978. The bill also authorized the appropriation of necessary amounts to cover administrative expenses until other revenue sources were sufficient for this purpose.

In the case of removal costs, a responsible party could have proceeded with a cleanup and and subsequently asserted claims against the fund, if the costs incurred exceeded the maximum liability of the responsible party, or if the party had a defense against liability under the bill. Additionally, to encourage maximum participation in cleanups, foreign claimants could have asserted claims for cleanup costs under specified circumstances.

Potentially responsible parties under the bill included oil-carrying vessels and offshore oil facilities (but not land facilities). The bill required such parties to carry adequate insurance or otherwise show evidence of financial responsibility sufficient to cover their potential maximum liability.

Under the bill, actions for judicial review of final trust fund determinations could have been brought in the United States District Court for the district in which the injury occurred or in which the defendant was found. Where appropriate, responsible parties could be joined in such proceedings. The statute of limitations for damage claims generally would have been the later of (1) three years after the discovery of an economic loss, or (2) six years after the date of the incident resulting in the loss. The bill was intended to provide an exclusive judicial remedy for the removal cost and other damage claims specified in the bill; hence, actions for such damages could be brought only as provided under the bill.

The bill would have prohibited States from imposing fees to fund oil spill compensation funds which duplicated the purposes of the bill. States having such funds in existence could have continued to require contributions for three years following the effective date of the bill. States would not have been prohibited from creating new funds to cover damages or activities not covered under the bill, or any new program which was not funded by a direct tax or fee which is paid into the state oil pollution fund.

The oil spill liability fund was to be administered by a nine-member Board of Directors under regulations prescribed by the Secretary of Transportation. These were to include three representatives of parties liable for the 1.3 cents per barrel fee on oil; three representatives of potential claimants against the fund (including State or local governments); and three individuals having particular knowledge and experience in oil spill liability and compensation. The fund was to submit an audit to Congress on an annual basis. The bill specified that, except as expressly provided in the bill, the fund was not to be deemed an agency or instrumentality of the United States.

These provisions would generally have been effective 180 days following the date of enactment of the bill. There was no expiration date for the trust fund; however, the bill stated that, if certain international conventions regarding oil pollution damage and compensation came into force for the United States, the provisions of the bill would be superseded with respect to damages covered by the conventions. In this event, other damages would have continued to be compensable as provided under the bill.

VI. OTHER HOUSE BILLS RELATING TO FINANCING OF SUPERFUND

A. H.R. 1775 (Rep. Moore)—"Superfund Revenue Reauthorization Act of 1985"

Overview

H.R. 1775 is intended to provide $5.3 billion to the Superfund ($3.0 billion in tax revenues, $1.5 billion in general revenues, and $0.8 billion in interest and recoveries) over a 5-year period. Tax revenue sources are: (1) a reduced petroleum tax, imposed at a rate of 0.17 cent per barrel; (2) a tax on the same feedstock chemicals as were included under H.R. 5640 as passed by the House in 1984, but at different tax rates (including an export exemption); (3) a tax on imported derivatives of taxable feedstocks; and (4) a tax on hazardous waste. The bill includes trust fund provisions that are similar to H.R. 5640, but does not include a special fund for leaking underground storage tanks and other petroleum-related releases.

Petroleum tax

The bill would reduce the petroleum tax to 0.17 cent per barrel (the present law rate is 0.79 cent per barrel), effective October 1, 1985. This tax would generally expire on September 30, 1990.

A special rule would provide for suspension of this tax during calendar year 1989, if (1) the unobligated Superfund balance exceeds $1.5 billion, and (2) the Treasury, after consulting with EPA, determines that this balance will exceed $1.5 billion on September 30, 1989 if no Superfund taxes (other than the tax on hazardous wastes) are imposed during the intervening year. A similar rule would provide for suspension of the tax during calendar year 1990 if the unobligated balance exceeded $1.5 billion on September 30, 1989, and would continue to exceed this amount on the following September 30 even if no further taxes (other than the tax on hazardous waste) were imposed.

Tax on chemical feedstocks

Tax rates

The tax on chemical feedstocks (sec. 4661) would be applied to an expanded list of taxable substances, as described in the following table (Table 10):

Table 10.—Comparison of Tax Rates on Chemical Feedstocks Under Present Law and H.R. 1775

[Dollars per ton, before any inflation adjustment]

Chemical	Present law	H.R. 1775
Organic substances:		
Acetylene	4.87	2.56
Benzene	4.87	2.56
Butadiene	4.87	2.56
Butane	4.87	2.56
Butylene	4.87	2.56
Coal-derived light oils	0	2.56
Coal tars	0	1.47
Ethylene	4.87	2.56
Methane	3.44	1.65
Napthalene	4.87	2.56
Propylene	4.87	2.56
Toluene	4.87	2.56
Xylene	4.87	2.56
Inorganic substances:		
Aluminum sulfate	0	2.91
Aluminum phosphide	0	16.00
Ammonia	2.64	2.18
Antimony	4.45	16.00
Antimony trioxide	3.75	16.00
Arsenic	4.45	16.00
Arsenic trioxide	3.41	10.71
Asbestos	0	4.76
Barium sulfide	2.30	5.89
Bromine	4.45	8.03
Cadmium	4.45	16.00
Chlorine	2.70	2.52
Chromite	1.52	0.70
Chromium	4.45	16.00
Cobalt	4.45	16.00
Copper	0	16.00
Cupric oxide	3.59	16.00
Cupric sulfate	1.87	16.00
Cuprous oxide	3.97	16.00
Hydrochloric acid	.29	0.78
Hydrogen fluoride	4.23	16.00
Lead	0	6.83
Lithium carbonate	0	16.00
Manganese	0	16.00
Mercury	4.45	16.00
Nickel	4.45	16.00
Nitric acid	.24	2.52
Phosphoric acid	0	6.32
Phosphorous	4.45	16.00
Potassium dichromate	1.69	12.41
Potassium hydroxide	.22	8.12

Table 10.—Comparison of Tax Rates on Chemical Feedstocks Under Present Law and H.R. 1775—Continued

[Dollars per ton, before any inflation adjustment]

Chemical	Present law	H.R. 1775
Selenium	0	16.00
Sodium dichromate	1.87	15.26
Sodium hydroxide	.28	2.33
Stannic chloride	2.12	16.00
Stannous chloride	2.85	16.00
Sulfuric acid	.26	0.64
Uranium oxide	0	16.00
Vanadium	0	16.00
Zinc	0	11.25
Zinc chloride	2.22	8.71
Zinc oxide	0	11.91
Zinc sulfate	1.90	6.85

Beginning in calendar year 1987, the tax rates specified in Table 10 would be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic organic chemicals of the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12 months ending in September 1985. In the case of inorganic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeds the comparable averages for the 12 months ending in September 1985. Tax rates would not be reduced below the levels shown in Table 10, even if the producer price index declines.

The rates provided for in the bill generally were designed to allocate 3 percent of the tax burden to crude oil and imported petroleum products, 59 percent to organic feedstocks, and 38 percent to inorganic feedstocks, with a maximum rate of $16 per ton (before any inflation adjustment) applying to any substance. (The comparable present law percentages are 15 percent, 65 percent, and 20 percent, respectively.) The percentages under the bill are intended to reflect the relative contributions of each category of feedstocks to wastes found by EPA to be present at Superfund sites, under studies conducted pursuant to section 301 of CERCLA.

For purposes of the feedstocks tax, xylene would include separated isomers of xylene only in the case of imported or exported xylene. The bill further would repeal the present law tax on xylene for periods before January 1, 1985. Manufacturers, producers, and importers of xylene who have paid the tax under present law would be permitted to obtain a refund of those taxes together with interest. To offset the resulting loss to the Superfund, the tax rate on xylene under the bill incorporates an increase over the rates that would otherwise apply, in order to recapture the tax liability that had been expected under present law for periods before 1985.

Exemptions

The bill would repeal the present law exemption for coal-derived substances.

The bill would modify the present law exception for specified nonferrous metallic compounds that have a transitory existence during metal refining or smelting processes. The bill would apply that rule to all metallic compounds and barium sulfide, rather than the six compounds specified in present law.

The bill would retain the present law exemptions for petrochemical feedstocks used in the production of fertilizer or used as fertilizer and for sulfuric acid produced as a byproduct of pollution control equipment. A conforming amendment would be made to the fertilizer exemption to reflect the addition of phosphoric acid to the list of taxable substances.

The bill also would provide that the environmental excise tax on chemical feedstocks is not to apply to feedstocks that are exported from the United States. If a tax has otherwise been paid on an exported substance, the exporter may claim a refund or credit for the amount of the tax previously paid.

Effective date

These amendments to the environmental excise tax on chemicals would take effect on October 1, 1985.

Termination date

The feedstocks tax would generally terminate after September 30, 1990, with provisions for earlier suspension or termination (as discussed above under the petroleum tax).

Tax on imported chemical derivatives

The bill would impose a new tax on imported substances that are directly and substantially manufactured or produced from raw materials consisting of one or more taxable feedstocks under Code section 4662 (as amended by the bill). The Treasury Department would be directed to issue regulations establishing guidelines (based on the percentage of the production or raw materials cost attributable to taxable feedstocks) for determining whether any specific substance is subject to this tax. The bill specifies that, in the case of nonferrous metals, taxable substances would include (1) any fabricated (or semi-fabricated) product that has customarily been considered by agencies of the Federal Government in calculating annual production, consumption, and import statistics for the metal, (2) any alloy or compound containing at least 5 percent of the metal by weight, and (3) any lead acid battery; however, the Treasury Department would be permitted to establish de minimis levels for exempting the nonferrous metal content of any such product or alloy from the tax.

The amount of tax imposed on any taxable imported substance would be equal to the amount of tax which would have been imposed (under section 4662) on the taxable feedstocks used to manufacture or produce the substance, if these feedstocks had been sold in the United States for an equivalent use. If the importer does not furnish sufficient information (as established by Treasury regulations) to determine the amount of tax under this method, the tax would be imposed at a rate of 5 percent of the appraised value of the imported substance at the time of import.

The tax would be imposed on the sale of taxable substances by the importer thereof. Importers subject to tax would include any person entering a taxable substance into the United States for consumption, use, or warehousing. (The term "United States" would be defined as it is for purposes of the feedstocks tax). If an importer uses a taxable substance, tax would be imposed on the importer as if he had sold the substance. Revenues from the tax would not be paid to Puerto Rico and the Virgin Islands under the cover over provisions of section 7652 of the Code.

The tax on imported chemical derivatives would be effective on October 1, 1986 (i.e., one year after the beginning of the reauthorization period).

Tax on disposal of hazardous waste

In general.—Under the bill, a tax would be imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, and (2) the receipt of hazardous waste for the purpose of ocean disposal. The term "hazardous waste" would mean any waste listed or identified under section 3001 of the Solid Waste Disposal Act (SWDA), as amended. The Treasury, in consultation with EPA, would prescribe rules relating to the imposition of tax, if any, on wastes listed under the SWDA after the date of enactment.

For purposes of the tax, a qualified hazardous waste management unit is defined as (1) the smallest area of land on or in which hazardous waste is placed or (2) a structure on or in which hazardous waste is placed, provided that such area or structure isolates hazardous waste within a qualified hazardous waste management facility and is required to obtain interim status or a final permit under Subtitle C of the SWDA. A qualified waste management facility is defined as any facility (under Subtitle C of the SWDA) that has received a permit or has been accorded interim status under section 3005 of the SWDA (or an equivalent State program authorized under section 3006 of that Act). This distinction between units and facilities means that tax would not necessarily be imposed at a qualified facility until hazardous waste is received at a specific unit that isolates hazardous wastes within the overall facility. The term "ocean disposal" would be defined as the incineration or dumping of hazardous waste over or into ocean waters or certain waters described in the Marine Protection Research and Sanctuaries Act of 1972.

Backup tax on generator.—If no tax has been imposed, under the provisions above, within 270 days after hazardous waste is generated, a tax would be imposed on such waste. This tax would be imposed at the highest hazardous waste tax rate (discussed below) applicable to the last day of the 270-day period, and would be paid by the generator of the hazardous waste, defined as the person whose act or process produces the hazardous waste. The backup tax would not apply to treated waste (as defined by the bill) or to generators of 100 kilograms or less of hazardous waste during the month in question (small quantity generators). Additionally, a partial credit (or refund) would be allowed against the backup tax for exported hazardous waste, equal to the difference between the tax imposed (i.e., the highest applicable rate) and the tax that would have been imposed at the lowest then applicable tax rate.[19]

Tax rates

Statutory rates.—The tax on hazardous waste would be imposed at two distinct rates, depending on the treatment or disposal method employed for the hazardous waste.

For hazardous waste received in a landfill, surface impoundment, waste pile, or land treatment unit[20] (that meets the definition of a qualified hazardous management unit), the tax would be imposed at a rate of $9.80 per ton for fiscal year 1986. This rate would be increased in each succeeding fiscal year, reaching a maximum rate of $16.32 for fiscal year 1990 as well as any 1991 extension period (discussed below).

For hazardous waste received for transport from the United States for purposes of ocean disposal, or received at a qualified hazardous waste management unit other than a landfill, surface impoundment, waste pile, or land treatment unit, the tax rate would be $2.45 per ton for fiscal year 1986, increasing to $4.08 per ton in fiscal 1990 (and any 1991 extension period).

As indicated above, the backup tax would be imposed at the highest then applicable tax rate (e.g., $9.80 per ton in fiscal year 1986).

Rate adjustments.—In addition to the phase-up of rates described above, the bill calls for adjustments in the hazardous waste tax rates, beginning in fiscal year 1988, to cover shortfalls of Superfund revenues from all revenue sources. These adjustments would be made according to a formula that generally increases the hazardous waste tax rates to cover overall revenue shortfalls for the year that is two years earlier than the year in question (i.e., 1988 tax rates would compensate for 1986 shortfalls, and so on). The adjustment of tax rates would require a determination by the Treasury Secretary, by the previous July 1, that there will be a cumulative shortfall for the fiscal year in question; however, the actual rate adjustment would be made according to the statutory formula. These adjustments are intended to ensure a level of cumulative revenues consistent with the projections contained in Table 7.[21]

As a final measure to achieve revenue targets, the bill allows for a 6-month extension of the tax, through April 1, 1991, if aggregate receipts for the reauthorization are less than $5.2 billion. The tax rates for this period would be adjusted to compensate for net 1989 and 1990 revenue shortfalls.

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[19] For example, in fiscal year 1986, the credit (or refund) would equal $7.35 per ton (i.e., $9.80 per ton minus $2.45 per ton. See discussion of tax rates below.

[20] These terms would be defined as under EPA regulations issued pursuant to sections 3004 and 3005 of the SWDA.

[21] These are identical to the Administration's revenue targets, as included in H.R. 1342.

Exemptions

Treatment of hazardous waste.—Under Treasury regulations, an exemption from tax (or a credit for tax paid) would be allowed for the qualified treatment of hazardous waste. (This exemption would apply both to the waste disposal and backup taxes.) Qualified treatment would include any treatment performed at a qualified hazardous waste management unit and employing a method, technique, or process that (1) meets detailed performance standards established by the EPA, and (2) has a destruction efficiency at least equivalent to the destruction efficiency applicable to incineration. Qualified treatment also would include surface impoundments that: (1) contain treated waste water during the secondary or tertiary phase of biological treatment subject to a permit issued under section 402 of the Clean Water Act (or which hold such treated waste water after treatment and prior to discharge); and (2) are in compliance with generally applicable ground water monitoring requirements of the SWDA.

The treatment exemption would generally take the form of a credit (or refund) for tax paid when hazardous waste was originally received at the qualified management unit. This credit (or refund) would be allowed in the same manner as an overpayment of tax. If the qualified treatment is completed before the time for payment of tax, no tax would be imposed.

If any residue from a qualified treatment itself constitutes a hazardous waste, such residue would be subject to tax as if it were originally generated in the treatment process.

CERCLA responses.—An exclusion from the hazardous waste disposal tax would be provided for the receipt of any hazardous waste pursuant to a removal or remedial action under CERCLA, where (1) the response action has been selected or approved by EPA, and (2) the release, or threatened release, of the substances that caused the response action occurred before October 1, 1985.

Procedure and administration

Imposition of tax.—The waste disposal tax would generally be imposed on the owner or operator of a qualified hazardous waste management unit. In the case of ocean disposal, tax would be imposed on the owner or operator of the vessel or aircraft that disposes of hazardous waste in or over the ocean. The backup tax would be imposed on the generator of hazardous waste (as described above).

Credit for tax paid.—The proposal includes a mechanism for credits or refunds where tax is paid with respect to hazardous waste and the waste is subsequently received at another qualified management unit or received for transport for ocean disposal, or exported from the United States (i.e., where a second taxable event takes place). (This mechanism also would apply to prevent double taxation from occurring as a result of the imposition of the backup tax.) The amount of any allowable credit is limited to the product of (1) the lesser of (a) the quantity of hazardous waste transferred, or (b) the quantity of hazardous waste on which the tax was previously paid, multiplied by (2) the lesser of (a) the rate of tax payable by the party receiving the hazardous waste, or (b) the rate of tax previously paid on the waste. These limitations prevent a refund for an amount greater than the tax originally paid. Credits or refunds would be made, without interest, to the person who paid the original tax, following the same procedures as would be used for overpayments of tax.

Information reporting.—Persons subject to the tax on hazardous waste would be required to submit to the Treasury such information as may be required in regulations, including (but not limited to) information that is required to be provided to EPA under the Solid Waste Disposal Act. A penalty of $25 per day (but not to exceed $25,000) would be imposed for failure to provide such information, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The proposal specifies that this is in addition to any other penalty provided by law.

No cover over of tax revenues.—The bill specifies that revenues from the tax on hazardous waste would not be paid to Puerto Rico or the Virgin Islands under the provisions of section 7652 of the Code.

Effective date

The tax on hazardous waste would be effective on October 1, 1985.

Termination date

The tax would expire after September 30, 1990, unless the Treasury determines that total Superfund receipts for the period October 1, 1985 through September 30, 1990 are less than $5.2 billion. In that case, the tax would terminate on March 31, 1991.

Repeal of post-closure liability tax and trust fund

The Post-closure Liability Trust Fund and the associated waste disposal tax (Code secs. 4681 and 4682) under present law would be repealed by the bill, effective October 1, 1983 (i.e., the original effective date of the tax).

Trust fund provisions

The bill contains trust fund provisions that generally are similar to those contained in H.R. 5640 as passed by the House in 1984 (discussed above), except that the bill does not include the provisions of H.R. 5640 that related to the special account for leaking underground storage tanks. The bill would: (1) officially rename the Fund "The Hazardous Substance Superfund" and place the Fund under the trust fund provisions of the Internal Revenue Code; (2) add hazardous waste tax revenues (together with revenues from the tax on imported chemical derivatives) as a financing source; and (3) delete natural resource damage claims as a permitted use of Fund proceeds. H.R. 1775 also would authorize general revenue appropriations to the Superfund of $294 million per year for fiscal years 1986 through 1990 (an aggregate of $1.47 billion), in addition to any previously authorized but unappropriated amounts.

The trust fund provisions of the bill would be effective on October 1, 1985.

B. H.R. 2018 (Reps. Schneider, Wyden, and others)—"Hazardous Waste Reduction Act of 1985"

Overview

H.R. 2018 would impose a tax on all forms of land and ocean disposal of hazardous wastes that are regulated by the Resource Conservation and Recovery Act ("RCRA"). The tax would be imposed at a rate of $20 per ton on disposal methods other than injection wells. Injection wells would be taxed at a $5 per ton rate. Hazardous waste rendered nonhazardous within one year of receipt at a treatment, storage, or disposal facility would receive a full credit for the tax paid on such waste. The tax is intended to raise $286 million per year, as part of a comprehensive Superfund financing package. The tax is intended to create economic incentives for the treatment, as opposed to land disposal, of hazardous waste.

Imposition of tax

The bill would impose tax on (1) the receipt of taxable hazardous waste in any qualified hazardous waste management unit, (2) the receipt of taxable hazardous waste for export or for ocean disposal (pursuant to a permit under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412)), and (3) the placement of any hazardous wastes in any other facility or location. Taxable hazardous waste would mean hazardous waste (including "toxic" and "characteristic" waste) that is identified or listed under section 3001 of the Solid Waste Disposal Act ("SWDA") as of the date of enactment of the bill, and is not thereafter delisted. The term "hazardous waste" would have the same meaning provided by section 1004 of the SWDA and the regulations thereunder. Thus, substances (including household wastes) that are not treated as hazardous wastes under section 1004 would not be subject to tax. If EPA lists or identifies additional hazardous wastes under section 3001 of the SWDA after January 1, 1985, then EPA would be required simultaneously to transmit to Congress recommendations concerning the taxation of such waste. [22]

A qualified hazardous waste management unit is defined as (1) the structure in or on which hazardous waste is placed, which structure isolates the hazardous waste within a qualifying treatment, storage, or disposal facility, or (2) if the waste is not placed in or on a structure, the smallest area of land in or on which hazardous waste is placed. Qualifying facilities are defined as those operating pursuant to a final or interim status permit under sec. 3005 of the SWDA, or under an equivalent State program authorized by sec. 3006 of the SWDA.

The tax would not apply to placement of hazardous waste on the premises of the person generating the waste, if the wastes are held for a period shorter than that which would require the generator to obtain a permit under the SWDA (generally 90 days). Further, this tax would not apply to a generator of less than 100 kilograms of hazardous waste in any calendar month (small quantity generator). In addition, the tax would not apply to facilities or locations

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[22] The bill further specifies that, in the case of solid wastes required to be studied under section 8002(f) or (p) of the SWDA, no tax could be imposed unless provided by legislation.

(including wastewater storage or treatment tanks) that are exempt from the permit, interim status, and manifest requirements under subtitle C of the SWDA, as in effect on the date of enactment of the bill.

Tax rates

General rate.—The tax would be imposed at a rate of $20 per ton for taxable hazardous waste disposed of by any method other than underground injection. This rate would apply to all other forms of land disposal or storage (including landfills, surface impoundments, waste piles, and land treatment), as well as to treatment facilities that do not render waste nonhazardous within one year of receipt. The $20 per ton rate would also apply to export or ocean disposal and to the placement of hazardous waste at non-RCRA facilities, including hazardous waste treated or disposed of in violation of RCRA permits.

Special rate for underground injection.—A $5 per ton tax rate would apply to hazardous waste injected into an underground well that is operating pursuant to a permit (or interim status) under the SWDA, and for which a permit is also in effect under part C of the Safe Drinking Water Act. The term "underground injection well" has the same meaning as in the Safe Drinking Water Act and the regulations promulgated thereunder.

Adjustment of tax rates.—The bill directs the Treasury Department to adjust tax rates, beginning in 1986, if necessary, to ensure the receipt of anticipated revenues. Under this provision, before October 1 of 1986 and each subsequent year of the reauthorization period, the Treasury would be required to estimate the actual amount of revenues to be derived from the tax during the fiscal year beginning that October 1. (These estimates could be based on the prior experience of the tax, together with other relevant information.) If the estimated fiscal year revenues are less than $286 million, Treasury would be required to increase the tax rates for that fiscal year by a percentage which Treasury estimates would result in $336 million of revenues during the fiscal year. This adjustment would apply proportionately to the general $20 tax rate and the $5 tax rate for disposal by underground injection. [23]

Exemptions from tax

As indicated above, various categories of wastes (including small generator wastes, mining wastes, temporarily stored hazardous wastes, and effluents discharged under Clean Water Act permits) would be excluded from the definition of taxable hazardous waste under the bill. The bill also provides the following exemptions from otherwise applicable tax:

Treatment or conversion of hazardous waste.—An exemption from tax (or a credit for tax paid) would be allowed for the qualified treatment or conversion of taxable hazardous waste that is completed within one year of the first taxable receipt or placement of the waste.[24] Qualified treatment or conversion would include any method, technique, or process that changes taxable hazardous waste into a substance that is no longer a taxable hazardous waste. The exemption would not apply to the application of waste onto, or its incorporation into, the soil surface ("land treatment"), or to any method that violates any substantive requirement of Federal or State law relating to the management of taxable hazardous waste, including requirements relating to dust suppression and to hazardous waste used as a fuel. The exemption also would not apply to qualified waste water treatment facilities; these facilities are the subject of a separate exemption (discussed below).

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[23] The adjustment to a $336 million revenue level appears to be designed to compensate for earlier revenue shortfalls and to ensure that aggregate revenues are at least equal to the originally intended level.

Wastewater treatment facilities.—An exemption would be provided for certain wastewater treatment facilities that have a permit in effect under section 402 of the Clean Water Act, and that are required to comply with ground water monitoring requirements generally applicable to facilities permitted under section 3005(c) of the SWDA. A qualified wastewater treatment facility is defined as a surface impoundment which contains treated wastewater during the secondary or tertiary phase of biological treatment, or that holds treated wastewater between treatment and discharge. Effective November 8, 1988, this exemption would be limited to facilities that are in compliance with the minimum technological requirements of the SWDA (sec. 3004(o)(1)(A)), or that meet the SWDA requirements relating to interim status surface impoundments.

Certain Superfund responses.—No tax would be imposed on the receipt or placement of hazardous waste in the course of carrying out any removal or remedial action under CERCLA, provided that (1) the removal or remedial action is carried out in accordance with a plan approved by the EPA or the State, and (2) the release or threatened release that caused the removal or remedial action occurred before October 1, 1985.

Movement from closed interim status facilities.—No tax would be imposed on waste removed from a facility operating with interim status under the SWDA, if such removal is pursuant to an EPA order closing the facility, and the waste is subsequently received at a facility holding a permit under the SWDA (or an equivalent State program).

Procedure and administration

Liability for tax.—The tax would be paid by the owner or operator of a qualified hazardous waste management unit; by the person holding the permit for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972; or, in the case of export, by the person exporting the taxable hazardous waste. In the case of other placements of taxable hazardous waste, tax would be imposed on the person placing the waste in the relevant facility or location.

Timing of payment.—The tax would be due at the close of the calendar quarter during which the waste became subject to tax.

Credits for prior payment.—Under Treasury regulations, if tax is imposed with respect to any waste, and a second tax is subsequently paid upon the receipt of the waste at a qualified management unit (or paid for wastes that are exported or burned at sea), then a credit or refund would be allowed to the person who paid the first tax. The amount of this credit would be limited to the lesser of the tax imposed on the first taxable event or the tax paid by reason of the second event. Such a credit (or refund) would be treated in the same manner as an overpayment of tax; however, no interest would be paid on credited (or refunded) amounts.

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[24] The Treasury would promulgate rules for applying the one-year limitation to fungible hazardous waste.

If tax is first imposed upon the receipt of taxable hazardous waste at a surface impoundment, and the waste is later received at an underground injection well, a credit (or refund) would be allowed for the amount by which the tax imposed upon receipt at the surface impoundment exceeds the tax paid upon receipt at the underground injection well (i.e., $15 per ton at the unadjusted tax rates). Thus, the net tax on waste stored for more than a year prior to underground injection would be $10 per ton ($20 plus $5 minus $15).

Credits or refunds also would be allowed where tax is paid with respect to waste later subjected to qualified treatment or conversion processes (see discussion of treatment or conversion exemption above). This credit would not be allowed to duplicate an earlier credit received under the rules described in the preceding paragraphs.

Information reporting and recordkeeping requirements.—The bill would require persons subject to tax to keep records and to comply with rules and regulations prescribed by the Treasury Department to ensure proper assessment and collection of the tax. The Treasury would be directed to consult with the EPA and the Army Corps of Engineers to ensure that records, statements, and returns for tax purposes are consistent, to the extent possible, with the reports required to be submitted to the EPA under the Solid Waste Disposal Act, the Safe Drinking Water Act, and the Marine Protection, Research, and Sanctuaries Act of 1972. As part of this coordination, the Treasury could require any person who is required to maintain records under those Acts to submit copies of such records (or reports) or otherwise to make them available to the Treasury.

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be deposited in the Superfund under the appropriate CERCLA provision.

Effective date

The tax would be effective for hazardous waste received, placed, or exported on or after January 1, 1986.

Termination date

The tax imposed by the bill would expire on September 30, 1990.

Studies

The bill would require the Secretary of the Treasury to submit to Congress, not later than April 1, 1986, a report on the implementation of the hazardous waste tax. Additionally, not later than January 1, 1987, the Secretary of the Treasury would be required to submit to Congress recommendations (if any) for a tax on hazardous waste that would (1) raise $286 million per year, and (2) discourage the disposal of hazardous wastes in an environmentally unsound manner (and to accomplish this with maximum administrative feasibility).

C. H.R. 2022 (Rep. Sikorski and others)—"Superfund Expansion and Protection Act of 1985"

Overview

H.R. 2022 is intended to provide $11.7 million to the Superfund over a 5-year period, including $10.3 billion in tax revenues from the following sources: (1) an increased petroleum tax to be imposed at a 15.8 cents per barrel rate; (2) a tax on the same chemical feedstocks at the same tax rates as under H.R. 5640 as passed by the House in 1984 (including an export exemption); and (3) a tax on the treatment, storage, disposal, or export of hazardous waste (with a complementary tax on unregulated placements of hazardous waste). The bill would further order a study of the feasibility of a tax on imported chemical derivatives to complement the feedstock tax. Total Superfund receipts also would also include $280 million per year of general revenue appropriations (an aggregate of $1.4 billion over the 5-year reauthorization period). The trust fund provisions and Superfund expenditure purposes also would generally be similar to provisions those approved by the House in 1984.

Petroleum tax

The petroleum tax (Code sec. 4611) would be increased to 15.8 cents per barrel under the bill (the present law rate is 0.79 cent per barrel), effective October 1, 1985. The tax would expire on September 30, 1990.

Tax on chemical feedstocks

Tax rates

The tax on chemical feedstocks (sec. 4661) would be applied to an expanded list of taxable substances (the same as that included in H.R. 5640 as passed by the House in 1984). The tax rates are also the same as those included in H.R. 5640 (assuming a waste and tax was not enacted). The taxable substances and applicable tax rates are illustrated in the following table (Table 11):

Table 11.—Comparison of Tax Rates on Chemical Feedstocks Under Present Law and H.R. 2022

[Dollars per ton before any adjustment for inflation]

Chemical	Present law	H.R. 2022			
		1985 and 1986	1987	1988 and 1989	1990
Organic substances:					
Acetylene	4.87	30.00	35.00	35.00	35.00

Table 11.—Comparison of Tax Rates on Chemical Feedstocks Under Present Law and H.R. 2022—Continued

[Dollars per ton before any adjustment for inflation]

Chemical	Present law	H.R. 2022			
		1985 and 1986	1987	1988 and 1989	1990
Benzene	4.87	8.80	13.20	15.40	17.60
Butadiene	4.87	13.05	19.58	22.84	26.11
Butane	4.87	5.60	8.40	9.80	11.20
Butylene	4.87	6.87	10.30	12.02	13.73
Coal-derived light oils	0	6.69	10.04	11.71	13.39
Coal tars	0	2.37	3.56	4.15	4.75
Ethylene	4.87	9.19	13.78	16.08	18.37
Methane	3.44	3.44	4.00	4.67	5.33
Napthalene	4.87	9.19	13.78	16.08	18.37
Propylene	4.87	7.83	11.74	13.70	15.65
Toluene	4.87	6.92	10.38	12.11	13.84
Xylene	4.87	14.05	21.30	21.77	20.53
Inorganic substances:					
Aluminum sulfate	0	4.69	7.04	8.40	9.35
Aluminum phosphide	0	30.00	35.00	35.00	35.00
Ammonia	2.64	3.52	5.28	6.16	7.04
Antimony	4.45	30.00	35.00	35.00	35.00
Antimony trioxide	3.75	30.00	35.00	35.00	35.00
Arsenic	4.45	30.00	35.00	35.00	35.00
Arsenic trioxide	3.41	17.29	25.94	30.26	34.59
Asbestos	0	7.68	11.52	13.44	15.36
Barium sulfide	2.30	9.51	14.26	16.64	19.01
Bromine	4.45	12.97	19.46	22.70	25.95
Cadmium	4.45	30.00	35.00	35.00	35.00
Chlorine	2.70	4.07	6.10	7.12	8.13
Chromite	1.52	1.52	1.76	1.98	2.27
Chromium	4.45	30.00	35.00	35.00	35.00
Cobalt	4.45	30.00	35.00	35.00	35.00
Copper	0	30.00	35.00	35.00	35.00
Cupric Oxide	3.59	30.00	35.00	35.00	35.00
Cupric sulfate	1.87	30.00	35.00	35.00	35.00
Cuprous oxide	3.97	30.00	35.00	35.00	35.00
Hydrochloric acid	.29	1.25	1.88	2.19	2.51
Hydrogen fluoride	4.23	30.00	35.00	35.00	35.00
Lead	0	11.03	16.54	19.30	22.05
Lithium carbonate	0	30.00	35.00	35.00	35.00
Manganese	0	30.00	35.00	35.00	35.00
Mercury	4.25	30.00	35.00	35.00	35.00
Nickel	4.25	30.00	35.00	35.00	35.00
Nitric acid	.24	4.07	6.10	7.12	8.13
Phosphoric acid	0	10.20	15.30	17.85	20.40
Phosphorous	4.45	6.65	7.59	7.59	7.59
Potassium dichromate	1.69	20.04	30.06	35.00	35.00

Table 11.—Comparison of Tax Rates on Chemical Feedstocks Under Present Law and H.R. 2022—Continued

[Dollars per ton before any adjustment for inflation]

Chemical	Present law	H.R. 2022			
		1985 and 1986	1987	1988 and 1989	1990
Potassium hydroxide	.22	13.11	19.66	22.94	26.21
Selenium	0	30.00	35.00	35.00	35.00
Sodium dichromate	1.87	24.64	35.00	35.00	35.00
Sodium hydroxide	.28	3.76	5.64	6.58	7.52
Stannic chloride	2.12	30.00	35.00	35.00	35.00
Stannous chloride	2.85	30.00	35.00	35.00	35.00
Sulfuric acid	.26	1.04	1.56	1.82	2.08
Uranium oxide	0	30.00	35.00	35.00	35.00
Vanadium	0	30.00	35.00	35.00	35.00
Zinc	0	16.64	24.96	29.12	33.28
Zinc chloride	2.22	14.07	21.10	24.62	28.13
Zinc oxide	0	19.24	28.86	33.67	35.00
Zinc sulfate	1.90	11.07	16.60	19.37	22.13

As under H.R. 5640, the rates specified in the table would be adjusted for inflation beginning in 1986. In the case of organic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic organic chemicals of the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12 months ending in September 1984. In the case of inorganic substances, the inflation adjustment for any year would be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeds the comparable average for the 12 months ending in September 1984. Tax rates would not be reduced below the levels shown in Table 11 even if the producer price index declined.

The rates provided for in the bill were generally determined by taxing each substance at the lesser of: (1) $30 per ton ($35, beginning in 1987), and (2) a specified percentage of the substance's estimated 1985 selling price. The percentages used for this purpose were 2 percent in 1985 and 1986, 3 percent in 1987, 3.5 percent in 1988 and 1989, and 4 percent in 1990.

For purposes of the chemical feedstock tax, the bill specifies that xylene is to include separated isomers of xylene only in the case of imported or exported xylene. The bill further would repeal the present law tax on xylene for periods before October 1, 1985. Manufacturers, producers, and importers of xylene who paid the tax under prior law would be permitted to obtain a refund of those taxes together with interest. To offset the resulting loss to the Superfund, the tax rates on xylene (shown in Table 12) incorporate an increase over the rates that would otherwise apply, in order to recapture the tax liability that had been expected under prior law for periods before 1985.

Exemptions

The bill would repeal the present law exemption for coal-derived substances.

The bill would modify the present law exception for specified nonferrous metallic compounds that have a transitory existence during metal refining or smelting processes. The bill would apply that rule to all metallic compounds and barium sulfide, rather than the six compounds specified in present law.

The bill would retain the present law exemptions for petrochemical feedstocks used in the production of fertilizer or used as fertilizer, and for sulfuric acid produced as a byproduct of pollution control equipment. A conforming amendment would be made to the fertilizer exemption to reflect the addition of phosphoric acid to the list of taxable substances.

The bill also provides that the environmental excise tax on feedstock chemicals is not to apply to feedstock chemicals that are exported from the United States. In particular, the bill would exempt from tax any taxable substance that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export. If a tax has otherwise been paid on an exported substance, the exporter could claim a refund or credit for the amount of the tax previously paid.

These amendments to the environmental excise tax on feedstock chemicals would take effect on October 1, 1985.

Study of tax on imported chemical derivatives

In connection with extending and expanding the chemical feedstock tax, the bill would direct the Treasury Department, in consultation with the International Trade Commission, to study the trade and other economic effects of the feedstocks tax and the feasibility and desirability of imposing a tax on imported derivatives of feedstocks subject to tax. The Treasury would be required to submit a report on its study to the Committee on Ways and Means and the Senate Committee on Finance not later than April 1, 1986.

Tax on hazardous waste

Imposition of tax

Treatment, storage, disposal, or export of hazardous waste.—Under the bill, a tax would be imposed, effective October 1, 1986, on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. The term "hazardous waste" would mean any waste listed or identified under section 3001 of the Solid Waste Disposal Act ("SWDA"), as amended. The Treasury, in consultation with EPA, would prescribe rules relating to the imposition of tax, if any, on wastes listed under the SWDA after the date of enactment.

For purposes of the tax, a qualified hazardous waste management unit is defined as (1) the smallest area of land on or in which hazardous waste is placed, or (2) a structure on or in which hazardous waste is placed, provided that such area or structure isolates hazardous waste within a qualified hazardous waste management facility and is required to obtain interim status or a final permit under Subtitle C of the SWDA. A qualified waste management facility is defined as any facility (as defined under Subtitle C of the SWDA) that has received a permit or has been accorded interim status under section 3005 of the SWDA (or an equivalent State program authorized under section 3006 of that Act). This distinction between units and facilities means that tax would not necessarily be imposed at a qualified facility until hazardous waste is received at a specific unit that isolates hazardous wastes within the overall facility. The term "ocean disposal" would be defined as the incineration or dumping of hazardous waste over or into ocean waters or certain waters described in the Marine Protection Research and Sanctuaries Act of 1972.

Tax on unregulated placements of hazardous waste.—If hazardous waste is disposed of or stored otherwise than by export, ocean disposal, or receipt at a qualified hazardous waste management unit (e.g., by illegal dumping of hazardous waste), a tax would be imposed on the placement of the waste in any other facility or location. This tax would be imposed at the higher of the two rates applicable under the bill (discussed below). The tax would be paid by the person placing the taxable hazardous waste in the facility or location. The tax would not apply to (1) storage by the generator of the waste for periods shorter than that which would require the generator to obtain a permit under section 3005 of the SWDA (or an equivalent authorized State program), (2) placement of taxable hazardous waste in a vehicle for transport to a facility at which the general tax will be imposed, or (3) small generators (100 kilograms or less of hazardous waste generation per month).

Tax rates

The bill would impose tax at two distinct rates depending on the method of treatment or disposal.

For hazardous waste received at a landfill, surface impoundment, waste pile, land treatment facility, or injection well,[25] the tax would be imposed at a rate of $5.05 per ton for fiscal year 1987. This rate would be increased in each succeeding fiscal year, reaching a maximum rate of $8.16 for fiscal year 1990.

For hazardous waste exported from the United States, received for transport from the United States for purposes of ocean disposal, or received at a qualified hazardous waste management unit other than a landfill, surface impoundment, waste pile, land treatment unit, or injection well, the tax rate would be $1.34 per ton for fiscal year 1987, increasing to $2.19 per ton in fiscal 1990.

The bill does not provide for any adjustment of tax rates to meet intended revenue targets.

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[25] These terms would be defined as under EPA regulations issued pursuant to sections 3004 and 3005 of the SWDA.

Exemptions

Two exemptions from the hazardous waste tax would be provided under the bill. First, an exclusion would be provided for the treatment, storage, or disposal of any hazardous waste pursuant to a removal or remedial action under CERCLA, where (1) the response action is selected by EPA, and (2) the release, or threatened release, of the substances that caused the response action first occurred before October 1, 1985. Second, hazardous waste generated at a federal facility, and subsequently received at a qualified hazardous waste management unit (or exported from the United States) would be exempt from tax.

The bill does not provide an exemption for the treatment of hazardous wastes.

Procedure and administration

Imposition of tax.—Generally, the tax would be imposed on the owner or operator of a qualified hazardous waste management unit. In the case of ocean disposal, tax would be imposed on the owner or operator of the vessel or aircraft that disposes of hazardous waste in or over the ocean. In the case of export, tax would be imposed on the exporter of hazardous waste. The tax on unregulated placements would be imposed on the person placing the hazardous waste in the relevant facility or location. The tax would be payable (in all cases) on a quarterly basis.

Credit for tax paid.—The bill includes a mechanism for credits or refunds where tax is paid with respect to hazardous waste and the waste is subsequently received at another qualified unit, received for transport for ocean disposal, or exported from the United States (i.e., where a second taxable event takes place). The amount of this credit is limited to the product of (1) the lesser of (a) the quantity of hazardous waste transferred, or (b) the quantity of hazardous waste on which the tax was previously paid, multiplied by (2) the lesser of (a) the rate of tax payable by the party receiving the hazardous waste, or (b) the rate of tax previously paid on the waste. These limitations prevent a refund for an amount greater than the tax originally paid.

Credits or refunds would be made, without interest, to the person who paid the original tax, following the same procedures as would be used for overpayments of tax.

Information reporting.—Persons subject to the tax would be required to submit to the Treasury such information as may be required in regulations, including (but not limited to) information that is required to be provided to EPA under the SWDA. A penalty of $25,000 per day would be imposed for failure to provide such information, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The bill specifies that this is in addition to any other penalty provided by law.

Effective date

The tax on hazardous waste would be effective on October 1, 1986.[26]

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[26] Because of a clerical error, the bill includes an effective date of October 1, 1985; however, the tax is imposed only on taxable events beginning October 1, 1986.

Termination date

The tax would expire after September 30, 1990.

Repeal of the post-closure liability tax and trust fund

The Post-closure Liability Trust Fund and the associated waste disposal tax (Code secs. 4681 and 4682) under present law would be repealed, effective October 1, 1983 (i.e., the original effective date of the tax).

Trust fund provisions

The bill contains trust fund provisions similar to H.R. 5640 as passed by the House in 1984. The bill would make Superfund moneys available to finance an expanded Superfund program, including costs incurred in connection with emergency relief and health effects studies, costs incurred in preparing toxicological profiles of certain hazardous substances, and costs incurred in evaluating potential hazards posed by facilities pursuant to petitions filed by any person. However, natural resource damage claims (section III(a)(3) of CERCLA) would be deleted as a Fund expenditure purpose. Also, as under H.R. 5640, the bill would establish a separate account for the purpose of responding to leaking underground storage tanks and other petroleum wastes that may present a significant risk to human health. This account would be funded exclusively by general revenue appropriations not exceeding $850 million over the 5-year reauthorization period (see discussion of H.R. 5640 in Part V above).

As under H.R. 5640, the bill would officially rename the Fund as the "Hazardous Substance Superfund" and place the trust fund provisions in the Internal Revenue Code. The substance of the trust fund administrative provisions would generally be unchanged from present law.

The amended trust fund provisions would be effective on October 1, 1985.

Non-tax provisions affecting the Hazardous Substance Superfund

The expenditure provisions of the bill are generally similar to H.R. 5640 as passed by the House in 1984, except that the bill does not include the Comprehensive Oil Spill Liability Trust Fund or the regulatory program for underground storage tanks included in H.R. 5640.[27] A regulatory program for underground storage tanks similar to that in H. R. 5640 was enacted as Title VI of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) ("RCRA amendments"). These provisions, insofar as they affect the demands upon and the resources available to the Superfund, are discussed in Part V above.

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[27] The Comprehensive Oil Spill Liability Trust Fund was added by a floor amendment to H.R. 5640 in 1984, but was never enacted.

In addition to the provisions of H.R. 5640, the bill (H.R. 2022) includes the following new provisions that affect the functioning of the Superfund:

(1) *Mandatory cleanup schedule and standards.*—The bill strengthens the mandatory cleanup schedule included in H.R. 5640 to require that 1,800 sites be listed on the National Priorities List by January 1, 1988, and that on-site cleanup activities begin at a rate of 200 facilities per year (beginning on October 1, 1986). The bill would further require implementation of a permanent treatment remedy at Superfund sites whenever such a remedy is technologically feasible. If the wastes at a Superfund site cannot be permanently treated, the bill allows EPA to implement an interim containment remedy, but provides that the site cannot be removed from the Superfund list until a permanent treatment remedy can be implemented.

(2) *Federal cause of action.*—The bill would create a Federal cause of action for victims of toxic waste exposure, allowing them to recover damages from responsible private parties under the same liability standards that apply in Superfund cleanup cases (i.e., strict, joint, and several liability). Compensable damages under this provision would include (1) medical expenses, (2) any loss of income or profits, or impairment of earning capacity, (3) pain and suffering, and (4) any economic loss or damage to property, including real and significant diminution in value. The Superfund would not compensate injured parties with respect to any of these damages. (This provision is similar to a provision in H.R. 5640 as originally reported by the Committee on Energy and Commerce last year).

(3) *Victims' assistance demonstration program.*—The bill would establish a 5-year demonstration program to assist victims of toxic substances. This program would cover 10 to 20 areas each year, and would be funded by a maximum of $15 million in Federal funds each year.

(4) *Community "right to know".*—The bill would establish a national system for notifying communities of potential toxic chemical hazards to which they might be exposed, and to mandate the development of emergency response and evacuation plans on a district-by-district basis.

D. H.R. 2208 (Reps. R.M. Hall and Fields)—"Hazardous Substance Response Act of 1985"

Overview

H.R. 2208, introduced by Representatives R. M. Hall and Fields, would impose a tax on hazardous waste to raise approximately $1.5 billion of Superfund revenues over a five-year period. The tax would be imposed at varying rates on four different categories of hazardous waste, depending on the method of disposal or storage, and would provide an exemption for hazardous waste treatment facilities. The tax imposed by the bill is intended to be an additional, rather than an exclusive, source of revenues for the Superfund.

Imposition of tax

The bill would impose a tax on (1) the receipt of hazardous waste for disposal at a qualified hazardous waste disposal facility, or (2) the long-term storage of a hazardous waste in a qualified hazardous waste storage facility. Long-term storage would be defined as storage for one year or more.[28]

Hazardous waste subject to the tax would include any waste that is identified or listed under section 3001 of the Solid Waste Disposal Act ("SWDA") as in effect on the date of enactment of the bill (other than waste the regulation of which has been suspended by Congress) and that is subject to recordkeeping requirements under sections 3002 and 3004 of that Act. The tax would not apply to any wastes that are exempt from regulation as a hazardous waste under section 3001 of the SWDA as of the date of enactment. If any waste is subsequently determined by EPA to pose a potential danger to human health and the environment, following studies under section 8002 of the SWDA, and if EPA promulgates regulations for the disposal of such waste, then the bill directs EPA to transmit to Congress a recommendation for imposing tax on the disposal or long-term storage of such waste. Tax would actually be imposed only when authorized by legislation.

Qualified hazardous waste storage facilities would include any storage facility, waste pile, or surface impoundment permitted or accorded interim status under section 3005 of the SWDA.[29] Qualified hazardous waste disposal facilities would mean any disposal facility permitted or accorded interim status under section 3005 of the SWDA, section 102 of the Marine Protection, Research and Sanctuaries Act, or part C of the Safe Drinking Water Act.

For purposes of the tax, the term disposal would mean the discharge, deposit, injection, dumping, or placing of any hazardous waste into or on any land or water so that such hazardous waste may enter the environment.

Tax would not be imposed on hazardous waste that is "treated" within one year after receipt at a hazardous waste facility. Treatment is defined as any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to convert it to a nonhazardous waste.[30]

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[28] For purposes of this rule, in the case of fungible waste, the last waste placed in a facility would be presumed to be the first waste removed (i.e., LIFO accounting).

[29] The terms "waste pile" and "surface impoundment" would be defined by reference to the SWDA.

Tax also would not be imposed under the bill on hazardous waste that is reclaimed. Reclamation includes: (1) the processing of hazardous waste to recover a usable product; (2) the use of hazardous wastes as an ingredient (including an intermediate ingredient) in an industrial process; and (3) the use of hazardous wastes as an effective substitute for a commercial product. Reclamation does not include the use of hazardous wastes to produce products that are applied to the land or burned for energy recovery.

Tax would be imposed on the byproduct or residue from any treatment or reclamation method where such byproduct or residue itself constituted a hazardous waste.

Tax rates

Tax would be imposed on four categories of hazardous waste, depending upon the disposal or storage method employed:

(1) *Land disposal.*—A $45 per ton tax rate would apply to hazardous waste disposed of in landfills, waste piles, or surface impoundments (as defined under the SWDA).

(2) *Ocean dumping or land treatment.*—A $25 per ton tax rate would apply to hazardous waste disposed of by ocean dumping or land treatment.[31]

(3) *Underground injection.*—A $5 per ton tax rate would apply to hazardous waste disposed of by underground injection.

(4) *Long-term storage.*—A $45 per ton tax rate would apply to hazardous waste stored for more than one year.

As an alternative to the tax rates above, if the owner or operator of a qualified hazardous waste facility were able to establish the water content of the hazardous waste deposited for storage or disposal, the owner or operator could elect, pursuant to Treasury regulations, to pay a tax of $50 per ton on the amount of such waste reduced by the weight of water (i.e., on a "dry weight" basis).

Exclusions from tax

The treatment or reclamation of hazardous waste (as defined under the bill) would generally not be subject to tax. The bill also would provide the following specific exclusions from otherwise applicable tax.

First, no tax would be imposed on the disposal or long-term storage of wastes in a surface impoundment that is part of a secondary or tertiary phase of a biological treatment facility subject to a permit issued under section 402 of the Clean Water Act. This exclusion would apply only if the facility is in compliance with generally applicable ground water monitoring requirements for facilities permitted under section 3005(c) of the SWDA.

Second, no tax would be imposed on the disposal or long-term storage of certain wastes associated with activities conducted under the provisions of the Comprehensive Environmental Response,

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[30] For this purpose, air and water effluents permitted by the Federal Government or by delegated State agencies, under the Clean Air Act or the Clean Water Act, would be considered nonhazardous wastes.

[31] Land treatment is a form of disposal regulated under RCRA. This is distinct from treatments as defined by the bill, which would be exempt from tax.

Compensation, and Liability Act ("CERCLA"). This exclusion would apply to (1) any waste disposed of in the course of carrying out a removal or remedial action under CERCLA (provided that the disposal or storage is carried out in accordance with a plan approved by EPA or a State), (2) any waste removed from a facility listed on the National Priorities List, and (3) any waste removed from a facility for which notification has been provided to EPA under section 103(c) of CERCLA (relating to certain nonpermitted facilities) or section 105 of CERCLA (relating to the establishment of the national contingency plan for the removal of oil and hazardous substances).

Procedure and administration

Liability for tax.—The tax would be imposed on the owner or operator of the qualified hazardous waste facility. In the case of disposal, the tax would be imposed at the time that the owner or operator of the facility signs (or is required to sign) the manifest or shipping paper accompanying the hazardous waste. In the case of on-site facilities, tax is imposed at the time at which the description and quantity of the hazardous waste are entered, or required to be entered, in the operating record. In the case of long-term storage, the tax would be paid at the expiration of one year following the date the waste was initially stored.

In the case of hazardous waste that is not disposed of or stored at a qualified facility as required in applicable regulations (e.g., "midnight dumping"), the tax would be imposed on the person disposing of or storing the hazardous waste.

Credit for prior tax.—Under the bill, if a person pays tax on the long-term storage of a hazardous waste, and the same person subsequently disposes of the waste, a credit would be allowed against the otherwise applicable disposal tax for any tax previously paid on the storage of the waste. If one person pays tax on the long-term storage of a waste and subsequently delivers that waste to another person, who is the owner or operator of a qualified disposal facility, then a nonrefundable credit would be allowed to the first person.[32]

Information reporting.—The bill would require any person liable for tax to keep records and comply with rules and regulations established by the Treasury Department to ensure proper assessment and collection of the tax. The Treasury Department would be directed to consult with EPA to ensure that records, statements, and returns for tax purposes be consistent, to the extent possible, with reports required to be submitted to EPA under the Solid Waste Disposal Act. As part of this coordination, the Treasury could require any generator, transporter, disposer, or storer of hazardous wastes to submit to the Treasury copies of records or reports required under the SWDA, the Marine Protection, Research and Sanctuaries Act, or the Safe Drinking Water Act.

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[32] For purposes of implementing these rules, in the case of fungible wastes, a "last-in first-out" presumption would apply.

Allocation to Superfund

Revenues from the tax (technically, amounts equivalent to these revenues) would be allocated to the Superfund under the appropriate provision of CERCLA.

Effective date

The tax generally would be effective for hazardous waste received for disposal or placed into long-term storage on or after January 1, 1986.

Termination date

The tax imposed by the bill would expire after September 30, 1990.

Study

The bill would require the Secretary of the Treasury, in consultation with the EPA Administrator, to submit to Congress not later than January 1, 1987, and annually thereafter, (1) a report on the amount of revenues being collected by the tax imposed by the bill, and (2) the Secretary's recommendations (if any) for changes in the tax. These would include recommended changes in order to (1) raise the amount of revenue originally anticipated from the tax, (2) ensure that the tax is discouraging the environmentally unsound disposal of waste, and (3) ensure that the tax is being collected with maximum administrative feasibility.

VII. ISSUES RELATING TO THE REAUTHORIZATION AND FINANCING OF SUPERFUND

A. Funding Level of the Superfund Program

Two main issues that arise in considering the appropriate level of funding for the Superfund program are: (1) the ultimate cost of cleaning up all the sites that pose an environmental threat; and (2) the rate at these sites should be cleaned up.

The Environmental Protection Agency ("EPA") recently estimated that the Federal cost of cleaning all current and future sites on the National Priorities List will total $9.1-14.5 billion in 1983 dollars.[33] Some have argued that these estimates are too low because of optimistic assumptions concerning the total number of hazardous sites that exist, and the proportion of these sites which will be cleaned up by private parties. The General Accounting Office has reviewed this estimate and concluded that the cost of cleanup could be as high as $39 billion.[34] The Congressional Office of Technology Assessment estimates that as many as 10,000 sites will require Superfund cleanup at an estimated cost of $100 billion over the next 50 years.[35] Thus, there is at present a large amount of uncertainty about the level of Superfund expenditures required to clean the nation's hazardous waste sites.

The second issue related to funding levels is the rate at which the sites should be cleaned up. Hazardous waste cleanup projects require lengthy site analysis, planning, preliminary engineering, and design work. This is particularly the case at sites where groundwater contamination is involved. Given the long lead time necessary for implementing site cleanups, the EPA has stated that it will not be able to spend productively more than $5.3 billion over the 1986-1990 period.

The Congressional Research Service ("CRS") analyzed a number of alleged obstacles to a more rapid program of hazardous waste cleanup including shortages of analytical laboratory capacity, experienced personnel, and permitted storage, treatment, and disposal facilities. CRS concluded that the main difficulty in accelerating the rate of Superfund cleanup is likely to be inadequate State matching funds rather than a lack of adequate laboratory capacity, personnel, or waste management facilities.[36]

The Congressional Office of Techology Assessment ("OTA") has recommended a two-part strategy of cleanups that could take 50 years.[37] The first part, for perhaps 15 years, would focus on site identification, response to imminent health and environmental hazards, and design of a long-term program that would permanently clean hazardous sites. The second part of the strategy would focus on permanent site cleanups using advanced technology to render waste nonhazardous. OTA argues that an overly rapid expansion of the Superfund program could result in a waste of Superfund resources if cleanup actions fail to render wastes nonhazardous:

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[33] U.S. Environmental Protection Agency, "Extent of the Hazardous Release Problems and Future Funding Needs" CERCLA section 301(a)(1)(C) Study" (December 11, 1984), pp. 4-10.

[34] General Accounting Office, *Cleaning Up Hazardous Wastes: An Overview of Superfund Reauthorization Issues,* GAO/RCED-85-69, (March 29,1985).

[35] U.S. Congress, Office of Technology Assessment, *Superfund: Strategy,* (April 1985).

[36] U.S. Congress, Congressional Research Service, *Superfund: How Many Sites? How Much Money?,* (March 6, 1985).

> "Spending large sums before specific cleanup goals are set and before permanent cleanup technologies are available leads to a false sense of security, a potential for inconsistent cleanups nationwide, and makes little environmental sense." (p.4)

It has been suggested that given the uncertainty about the rate at which the Superfund can be spent, it may be desirable to terminate the Superfund taxes if a large balance builds up in the fund. The 1980 Act, for example, contains a trigger mechanism which temporarily suspends the feedstock tax if the Superfund balance exceeds $0.9 billion and would not fall below $0.5 billion in the subsequent year. This type of trigger could guard against excessive prepayment into the Superfund.

On the other hand, opponents of this type of trigger argue that it effectively would enable the EPA to control the level of Superfund taxes by manipulating the rate at which outlays are made from the Superfund. In addition, taxpayers would be less certain about their potential Superfund tax liability over the 5-year reauthorization period. It is also argued that without the assurance of adequate revenues, preliminary planning and design activities will be hampered, and the ultimate schedule of cleanup could be significantly delayed. Finally, given the lead time necessary to plan cleanup projects, the Superfund tax might be terminated just as the demand for Fund resources sharply rises in the construction phase of the program.

B. General Revenue Share of Superfund Expenditures

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 established an excise tax on certain chemical feedstocks and petroleum as the primary revenue source for the Superfund; through fiscal 1984, appropriations from general revenues have amounted to 12.2 percent of combined Superfund revenues from taxes and general appropriations. The Superfund was intended to cover the cost of cleaning sites only where liability could not be traced to a private party.

Payers of the feedstock tax have challenged the equity of this tax. First, the economic beneficiaries of the prior use of cheap waste disposal practices include: past customers of products fabricated in waste producing plants; past stockholders, and past workers. However, the burden of the Superfund feedstock tax falls on current customers, shareholders, and workers. Thus, there may be no direct connection between past beneficiaries of cheap waste disposal practices and the individuals who currently bear the burden of the feedstock tax. Second, companies who pay to remediate all sites for which they are responsible (whether voluntarily or under court order) are, in effect, taxed twice under the feedstock tax. Third, the current excise tax is assessed on chemical feedstocks rather than on the actual hazardous wastes that are commonly found in abandoned disposal sites. Companies outside of the chemical industry that generated these hazardous wastes are not directly taxed under current law. Even if the disposal of hazardous wastes were taxed, as some have suggested, there would be no direct link between current taxpayers and past waste disposers.

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[37] Ibid.

On these grounds, it can be argued that general revenues should finance a larger share of Superfund expenditures. Unlike many of the other trust funds supervised by the Treasury (e.g., the airport and airway, highway, and inland waterway trust funds), the payers of Superfund taxes do not directly benefit from the facilities which are built and maintained by the Superfund. In Western Europe, general revenue financing is the approach generally followed for funding the cleanup of abandoned waste sites.

Advocates of the feedstock tax argue that it is appropriate and equitable to place the financial burden of cleaning hazardous waste sites on the industries responsible for creating the problem.[38] This approach has been followed in other instances where Congress has made the judgment that responsibility for a present problem or condition more properly attaches to a particular segment of the economy rather than the entire body of taxpayers who provide general revenue. For example, under the Black Lung Benefits program, benefits to diseased coal miners and survivors are financed by an excise tax on current coal production. Also, under the Surface Mining and Reclamation Act, reclamation of former surface mining sites is financed by a fee on coal production.

Finally, it is argued that in view of the size of the Federal budget deficit it would be irresponsible to finance a significant amount of hazardous waste cleanup from general revenues. As an alternative to general revenue appropriations, a number of broad-base tax alternatives have been proposed to finance a portion of the Superfund. These proposals include corporate taxes that would be computed on the basis of net receipts, manufacturing value added, and earnings and profits. Such taxes would spread the costs of cleanup broadly over a large number of firms, and would be imposed at relatively low tax rates.

C. Chemical Feedstock Tax

CERCLA imposed an excise tax on 42 chemical feedstocks and on petroleum. The main criterion for determining the list of taxable feedstocks was the prevalence of hazardous wastes derived from these feedstocks. The basic feedstock tax rates were set at $4.87 per ton for petrochemicals, $4.45/ton for inorganic chemicals, and

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[38] According to one study, the chemical and allied products industries are responsible for producing 84 percent of the contaminants found at national priority list sites. See: Management Analysis Center, Inc. *Financing Superfund: An Analysis of CERCLA Taxes and Alternative Revenue Approaches* (June 1984), p. 38.

$0.0079 per barrel for petroleum.[39] These rates were necessary to achieve a $1.6 billion Superfund program over five years and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of organic, inorganic, and petroleum wastes estimated to be found in hazardous waste sites (based on data available in 1980). In addition, the feedstock rates were limited to 2 percent of wholesale price (based on data available in 1980).

Exemptions were granted for: methane or butane used as a fuel; ammonia, sulfuric acid, and nitric acid used in the production of fertilizer; sulfuric acid produced as a byproduct of air pollution control; and chemicals derived from coal. In addition, section 1019 of the Deficit Reduction Act of 1984 clarified that exemptions also would apply to specified feedstocks used in the production of certain fuels and transitory chemicals that occur in metal refining processes.

The feedstock tax has been criticized as arbitrary and potentially damaging to industry. Feedstock taxes are not based on either the degree of hazard or volume of wastes derived from these feedstocks. Thus, it is argued that a tax on the disposal of hazardous wastes would be more equitable than the feedstock tax.

Proponents of the feedstock tax argue that it is successful in accomplishing the stated goal of financing the Superfund program through taxes paid by the industries that account for most of the problem that led Congress to establish the program. According to a report prepared for the EPA, 71 percent of all regulated hazardous wastes are produced by the chemical and petroleum refining industries that are the primary payors of the feedstock tax.[40] Most hazardous wastes or substances are made from the feedstocks subject to tax, and the vast majority of those substances ranked highly hazardous at waste sites are taxed feedstocks or their derivatives.

D. Effect of Feedstock Tax on Trade

Under current law, imports of feedstocks are subject to tax, as are imports of petroleum and petroleum products, but imports of derivatives produced from taxed feedstocks are not subject to tax. It is argued that the feedstock tax subsidizes imports derived from taxed chemicals, and encourages U.S. chemical companies to manufacture offshore. Imported products that are derived from feedstocks that would have been taxable if produced or sold in the United States escape tax and are, in effect, subsidized by the Superfund tax. For example, batteries consist mostly of lead and lead oxide. Lead oxide is a taxable feedstock; however, imported batteries are not taxed. Thus, disregarding transportation costs, imported automobile batteries (made with untaxed lead oxide) have a cost advantage over those produced in the United States. Similarly, exports of U.S.-produced batteries suffer from a cost disadvantage relative to foreign-produced batteries.

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[39] Compounds (e.g., arsenic trioxide) were taxed at a fraction of the rate imposed on their constituents (i.e., arsenic) based on percentage composition.

[40] Westat, Inc., *National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981*, (April 1984).

While the feedstock tax could, in theory, harm U.S. trade it is unlikely that the actual damage to the U.S. chemical industry is large at present tax rates. The maximum tax imposed by current law on any chemical is 2.0 percent of the wholesale price estimated in 1980. By comparison, the value of the dollar against a group of 11 major foreign currencies increased by about 10 percent over the last 6 months of 1984, effectively raising the price of U.S. chemical exports by that amount.[41] While some segments of the chemical industry are highly competitive, the recent growth in petrochemical imports appears to be attributable largely to the appreciation of the dollar against foreign currencies and to competition from plants established near low cost sources of natural gas in the Middle East and elsewhere.[42]

Since foreign manufacturers of chemical imports did not generate the wastes found in U.S. disposal sites, it is difficult to argue that they should pay to clean them up. (However, some chemical imports are used in manufacturing processes which generate hazardous wastes.) Without a doubt many environmental regulations (e.g., the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Solid Waste Disposal Act, the Occupational Safety and Health Act, etc.) raise the cost of manufacturing in the United States. However, Congress has not provided systematic trade relief to offset the effects of any such regulations or taxes that affect the costs of domestically produced goods.

Current law does not provide an exemption for feedstocks that are exported. Some argue that such an exemption is necessary to prevent U.S. producers of exported feedstocks from being adversely affected, vis-a-vis foreign producers of these materials, in their attempt to compete for the business of foreign purchasers. However, it can be argued that an export exemption would adversely affect U.S. purchasers of feedstocks, since they will have to compete against, for example, Canadian or Mexican manufacturers who would be able to purchase feedstocks on a tax-free basis. These foreign purchasers could ship derivatives back to the U.S. and set prices without having to take account of the tax paid with respect to U.S. purchasers and users of feedstocks.

E. Tax on Hazardous Waste

Several basic issues arise in the discussion of a tax on hazardous waste in the context of financing the Superfund program: incentive effects; predictability of revenues; administrative concerns; trade effects; and appropriate financing sources for the particular expenditures authorized under the program.

In analyzing the effects of proposed taxes on hazardous waste it is useful to distinguish between "disposal" and "generation" taxes. Under a waste disposal tax, wastes that enter the environment are subject to tax. Treatment, reclamation, and recycling of waste are exempt; however, residual wastes from these processes that enter the environment are subject to tax. Under a waste generation tax, the generation of waste, rather than its disposal, is subject to tax. H. R. 2208 (Reps. R.M. Hall and Fields), H.R. 2018 (Reps. Schneider and Wyden), and the hazardous waste tax in H.R. 1775 (Rep. Moore) are structured generally as disposal taxes. The Administration's waste tax proposal, like the hazardous waste tax in H.R. 2022 (Rep. Sikorski), can be viewed as a hybrid approach combining, in effect, a relatively low-rate generation tax on all hazardous waste with a surtax on certain types of disposal.

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[41] U.S. Congress, Congressional Research Service, Memorandum prepared for the House Committee on Energy and Commerce Subcommittee on Commerce, Transportation, and Tourism, (March 21, 1985), p. 7.

[42] U.S. EPA "Impact of CERCLA Taxes on the U.S. Balance of Trade," CERCLA Section 301(a)(1)(F) Study, Final Report, (December 1984).

Incentive effects

A rationale for a hazardous waste disposal tax, like other pollution taxes, is that the market price of disposal does not reflect the full cost to society. Even waste that is properly disposed of, in a facility regulated under the provisions of the Resource Conservation and Recovery Act ("RCRA"), may still pose some long-term risk to the public health and welfare. Accidental releases can occur in the transport of hazardous wastes and at disposal facilities. Property values around disposal facilities may be reduced. If the owner of a hazardous waste facility becomes insolvent, the cost of maintaining the facility is shifted to the government. Thus, in theory, disposal tax rates should vary with the degree of hazard associated with each type of waste and the environmental soundness of the disposal method employed. A disposal tax based solely on the social cost of waste disposal generally would exempt proper treatment and recycling of hazardous wastes and tax only the untreated hazardous residuals from these processes upon ultimate disposal.

A disposal tax, unlike a feedstock tax, has the effect of creating direct economic incentives for waste reduction and treatment. First, at the production level, there is an incentive to adopt manufacturing processes that generate smaller amounts of the more toxic, highly taxed wastes. Second, at the treatment stage, there is an incentive to recycle and otherwise reduce the volume of hazardous wastes that must be disposed. Finally, at the disposal stage, there is an incentive to use presumably safer methods of waste disposal which are taxed at a lower rate. Thus, the tax, administered by the Internal Revenue Service, could supplement the environmental statutes administered by EPA in attempting to achieve environmental goals.

It is unclear, however, if adequate information exists about the degree of hazard of different wastes and the environmental soundness of alternative disposal methods to design a rational disposal tax. According to the Office of Technology Assessment (which supports the concept of a disposal tax) there is insufficient scientific data to determine whether deep well injection is a highly safe method of long-term disposal. A tax that provided lower tax rates or exemptions for certain types of treatment or disposal could increase the amount of waste flowing into less heavily taxed disposal and treatment methods. If these low tax rates and exemptions are based on inadequate scientific data, such a tax could actually increase the amount of environmental damage imposed on society by the disposal of hazardous waste. For example, under the Administration's proposal (as introduced in H.R. 1342, by request), deep well injection would in many cases be taxed at a lower rate than biological wastewater treatment. The inability to define adequately hazardous wastes and to determine their relative harmfulness is the primary reason why countries such as France and Germany, which tax the discharge of pollutants into waterways, have not enacted taxes on hazardous waste disposal.

A waste generation tax would promote environmental policy by discouraging the generation of hazardous waste; however, unlike a disposal tax, it would not create an incentive or disincentive for any particular method of treatment or disposal. A waste generator's choice among treatment and disposal methods would be determined primarily by the costs of alternative technologies and EPA regulations, rather than by the tax Code.

Under either a disposal or a generation tax on hazardous waste that is collected at regulated treatment, storage, and disposal facilities, some waste likely will escape taxation because of gaps in the RCRA regulatory system. For example, hazardous waste that is mixed with domestic sewage and delivered to a publicly-owned treatment works ("POTW") is regulated under the Clean Water Act instead of RCRA. Consequently, a tax on hazardous waste imposed at RCRA regulated facilities will be avoided by generators who dispose of their waste in a municipal sewer system. Thus, a waste-end tax may encourage firms to divert hazardous wastes into the municipal sewer system rather than delivering wastes to a RCRA regulated hazardous waste facility.

Predictability of revenues

Twenty-three States currently employ or have employed some form of waste-based tax.[43] The General Accounting Office (GAO) recently studied the experience with waste-end taxes in New York, California, and New Hampshire, and concluded that[44]

> ". . . the three states (1) have not collected the revenues they anticipated, (2) have not determined if the tax achieved its objective of encouraging more desirable waste management practices, and (3) were concerned that a similar federal tax may reduce state tax revenues or increase the incentive to illegally dispose of hazardous waste. In addition, GAO found that in order to implement similar federal waste-end taxes, more data are needed on the types and quantities of waste generated and the treatment, storage, and disposal methods used. These data are necessary to accurately estimate revenue, measure change in disposal practices, and assure compliance with the tax."

The revenue shortfalls in these States were 39 percent in California, 73 percent in New York, and 93 percent in New Hampshire. [45] Florida replaced its waste-end tax with a feedstock tax in 1983 after discovering that administrative costs exceeded revenues. The State experience with disposal taxes raises the issue that a revenue shortfall might also occur at the Federal level.

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[43] Fred C. Hart Associates, Inc. "CERCLA Funding Options," pp. 21-22.

[44] GAO, *State Experiences With Taxes on Generators or Disposers of Hazardous Waste* (May 4, 1984), p. ii.

[45] ICF, Inc. "Briefing on CERCLA Tax Alternatives," prepared for the Environmental Protection Agency, part II, p. 14.

Part of the revenue shortfalls experienced at the State level are due to out-of-State disposal of wastes. This type of tax avoidance would not affect a Federal level disposal tax, except to the extent hazardous wastes are exported from the country. A second explanation is that most of the State hazardous waste taxes have been enacted since 1980 and are relatively new. The "learning curve" syndrome may be responsible for the greater than 90-percent revenue shortfall in the Federal disposal tax enacted in the CERCLA of 1980 to fund the Post-closure Liability Trust Fund.[46] A third cause of revenue shortfalls is that the disposal tax creates incentives for waste management, both by legal and illegal means. California, in one year, experienced a 28-percent decline in reported waste, including a 66-percent decline in extremely hazardous wastes, after enacting a waste-end tax.[47] In combination with State waste-end taxes, a Federal disposal tax could raise the effective tax rate on disposal to the point where serious revenue shortfalls might occur at both levels of government.

At the State level, it appears that some of the hazardous waste reduction is due to "midnight" dumping, waste blending, questionable recycling and treatment operations, and under-reporting of waste volumes.[48] Under-reporting is particularly difficult to detect in the case of on-site disposal, since the waste producer and disposer are the same party. This could be a significant problem for a Federal disposal tax because 96 percent of all hazardous waste is disposed of on site.[49] As a result, some argue that an improperly designed waste-end tax could seriously undermine compliance with the RCRA reporting requirements.

Ultimately, there may be a conflict between the two major goals of a disposal tax—the provision of revenue for the Superfund program and the encouragement of proper treatment of hazardous wastes. To the extent that the tax applies only to those disposal practices that cause environmental harm and is successful in discouraging such practices, the revenues generated by the tax will decrease. However, the experience with the Superfund program indicates that the revenue needs for cleaning up priority sites are likely to increase over time.

Hazardous waste generation is a considerably larger tax base than hazardous waste disposal (because waste that is treated is not excluded). Thus, to raise an equal amount of revenue, a lower rate of tax is required if waste generation, rather than disposal, is subject to tax. At a lower tax rate, a waste generation tax is less likely to result in midnight dumping, and other causes of revenue shortfall, than is a disposal tax. Also, tax revenues from a generation tax are likely to be more stable than a tax imposed on particular types of disposal, since it is more difficult for taxpayers to reduce waste generation than it is to change disposal methods.

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[46] According to the most recent IRS data, the post-closure tax raised an average of only $1.5 million per quarter in the first two quarters of fiscal 1984 relative to EPA projections of $25 million per quarter when the tax was enacted in 1980.

[47] ICF, Inc. "Briefing on CERCLA Tax Alternatives," part II, p. 20.

[48] *Ibid.*, pp. 18-19.

[49] Westat Study.

Administrative concerns

Some have questioned whether the current RCRA regulatory system is adequate for assessing, collecting, monitoring, and enforcing a waste-end tax. Notwithstanding the RCRA regulatory system, every State that has adopted a waste-end tax has found it necessary to develop a separate reporting system.[50] The GAO concluded that current data were inadequate for determining both the cause of the revenue shortfalls in the State programs and the extent to which illegal disposal practices may have increased as a result of taxing hazardous waste.

Another issue is the relatively high administrative cost of hazardous waste taxes. The current Superfund tax is imposed on 42 feedstocks and collected from approximately 600 taxpayers. On the other hand, a hazardous waste tax might be imposed on more than 430 wastes regulated under RCRA, and collected from approximately 5,000 on-site and off-site hazardous waste disposal facilities.[51] The Internal Revenue Service ("IRS") would be required to develop complex regulations covering the hundreds of substances involved, and specifying the taxation of numerous recycling, treatment, and disposal practices.

Further, it is not clear to what extent the RCRA regulatory system is adequate to provide the framework for the administration of a tax. For example, liability for an excise tax generally depends on the occurrence of a taxable event, but the RCRA system is geared to the prevention of certain events (i.e., illegal disposals) which are prohibited under that law. It is unclear at what point legal treatment and/or legal disposal would require the payment of a tax. Some proposed versions of a waste disposal tax would distinguish among storage, treatment, and disposal for purposes of defining the taxable event. However, the distinctions among these activities under present law are not always clear.

In addition, since RCRA allows approved State programs to administer the Federal requirements, it is unclear to what extent a Federal tax based on RCRA ultimately would be administered by the States, which could vary in their definition of terms and administrative practices.

Also, there is considerable controversy over the RCRA regulations that define hazardous wastes and various management practices, as indicated in the following statement:

> "Industry and environmentalists alike, unhappy with much of what they already see, have challenged numerous regulations and are involved with EPA in lengthy negotiations over the way those regulations should ultimately read. The states, which administer RCRA, are finding their efforts hobbled because promised federal aid has not materialized."[52]

The Congress in 1984 adopted amendments to the RCRA which, *inter alia*, control certain questionable treatment practices and expand the number of generators subject to the statute. If a disposal tax is tied to RCRA statute, the delays and frequent changes and challenges to EPA's regulations could make it difficult for the IRS to administer the tax and to issue regulations consistent with EPA's regulations.

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[50] ICF, Inc., "Briefing on CERCLA alternatives," p. 26.

[51] *Ibid.*, p. 12.

[52] *Chemical Week*, "Getting RCRA Under Control" (June 9, 1982), p. 36.

For example, if the EPA were to issue regulations listing a new hazardous waste, then the definition of hazardous wastes under RCRA could differ from the definition for purposes of the waste-end tax. Under such circumstances, the environmental regulations would require more waste to be delivered to RCRA regulated hazardous waste facilities than would be subject to the waste-end tax. Consequently, hazardous waste facility operators would have to determine the fraction of waste that is subject to tax. Such determinations would not be required under the RCRA regulations so that the waste-end tax could require additional recordkeeping. The Treasury would in many cases seek to tax newly listed hazardous waste on the grounds of simplicity and equity. Pressure might be brought to bear on the EPA not to list new hazardous waste because of the collateral tax consequences. Thus, the enactment of a sizable waste-end tax could result in additional pressure for EPA to delist existing hazardous wastes or to fail to list new hazardous wastes.

There may be difficulty in administering a disposal tax where waste is stored or treated in several waste management units prior to ultimate disposal. To prevent double taxation it generally will be necessary to provide a credit for tax paid when waste is moved from unit to another. Problems may arise where the rate of tax varies depending on the type of treatment unit. Also, some types of treatment (e.g., neutralization of acids by the addition of a basic compound) may increase the amount of waste material. This could result in a tax credit for a larger amount of waste than was originally subject to tax. The operating logs that hazardous waste facilities are required to maintain under RCRA may be inadequate for purposes of computing tax credits that may arise when waste is moved from one treatment, storage, or disposal unit to another. Such difficulties generally would be avoided by taxing the generation of hazardous waste (regardless of the method of treatment or disposal) rather than the disposal of such waste.

Another issue is whether a waste disposal tax should be levied on a wet weight or dry weight basis. For example, since wastes injected into underground wells are very dilute (90-99 percent water) taxing disposal on a wet weight basis increases the share of the tax burden paid by underground injection relative to other types of land disposal (if the same tax rate applies to both). If desired, the higher water content of wastes injected into underground wells could be accounted for by lowering the tax rate.

Some oppose taxing disposal on a dry weight basis because of the added administrative burden. The cost of determining dry weight content has been estimated to be on the order of $20 to $75 per barrel, which could be more than the tax liability. Under the existing post-closure tax, some small waste generators currently do not bother to determine the dry weight content of their wastes and pay the tax on a wet weight basis. This may put small disposers at a disadvantage relative to large disposers (who have more uniform waste streams and in-house laboratory facilities).

As a practical matter, it may be quite difficult to develop comprehensive regulations prescribing the method of testing each of the hundreds of hazardous wastes to determine accurately the water content. For example, evaporative methods are not accurate for volatile wastes, while the Karl Fischer titration procedure is ineffective for testing wastes that contain significant amounts of acids or aldehydes. The regulations would also have to specify the frequency of sampling continuous waste streams because water content may be variable. For example, in many wastewater treatment facilities the diluteness of the waste stream surges after it rains because storm water and hazardous wastes share a common sewer system. Finally, EPA enforcement personnel would likely be required to verify the analytical procedures and sampling methods of taxpayers, since IRS agents do not have the required expertise in chemistry.

Trade effect

Like the feedstock tax, a waste-end tax raises the price of manufacturing certain products in the United States. This effectively taxes exports and subsidizes imports of such products. However, depending on the tax rate imposed, the impact of a waste-end tax on individual businesses may be many times larger than the feedstock tax. The feedstock tax in current law was designed to prevent an increase in production costs of more than 2.0 percent; however, a waste-end tax could amount to a much larger percent of manufacturing costs for products whose fabrication involves large volumes of hazardous wastes. For example, a 1983 survey of off-site disposal charges, prepared for the EPA, found that the cost of landfill disposal for bulk wastes ranged from $28 to $100 per metric ton, and the cost of land treatment ranged from $5 to $24 per metric ton.[53]. Thus, a tax of $10 per ton on land disposal, approximately the rate proposed by the Administration, could raise the cost of landfill by 10 to 36 percent, and the cost of land treatment by 42 to 200 percent. Consequently, waste-intensive products could be priced out of the market by imports from countries that have few, if any, regulations governing the disposal of hazardous waste. In these cases, U.S. manufacturers might shut down production and possibly establish manufacturing operations in other countries with weaker environmental standards. While some would welcome the export of industries that produce large volumes of hazardous wastes, the cost to the U.S. economy in terms of jobs and income must be considered.

Appropriateness of revenue source

One of the arguments for a waste-end tax is that under a feedstock tax, the burden of financing the Superfund program is not properly placed on many of the industries which produced the hazardous wastes which currently pose an environmental threat. It is argued that since a waste-end tax could be more highly correlated with the generation of wastes found at Superfund sites, it is a more appropriate tax base.

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[53] Booz-Allen, *Review of Activities of Firms in the Commercial Hazardous Waste Management Industry*, 1983, report SW-894.

Opponents of a waste-end tax respond that this argument is not valid to the extent that a large volume of waste is not subject to the tax. Wastes which are exported, generated by small generators exempt from RCRA, or are municipal wastes might not be subject to the tax. To the extent that the tax is tied to the existing RCRA regulatory system, disposal which falls outside that system would not be subject to the tax. Further, those companies currently disposing of waste may not be the same companies that generated the waste found in Superfund sites.

F. Post-closure Liability Trust Fund

Under current law, the Post-closure Liability Trust Fund transfers legal liability of owners and operators of private disposal sites to the Federal government, provided that such sites are operated and closed according to RCRA requirements, and the EPA determines, 5 years after closure, that there is no substantial likelihood of future release. In exchange for assuming such liability, a tax of $2.13 per dry weight metric ton was imposed on the disposal of hazardous wastes at qualified facilities. In effect, the post-closure tax is in lieu of an insurance premium for the coverage of all future claims arising from health and property damage caused by a hazardous waste facility.

The Administration proposal would repeal the Post-closure Liability Trust Fund enacted in 1980. There are several arguments for repeal. First, no estimate has been made of the liability which ultimately could be transferred to the Federal government under this provision. This liability is unlimited, and is governed largely by State and local laws which could change and could cover such items as medical expenses, pain and suffering, and income losses. Thus, the amount of claims against the Fund could be extremely large, and there is concern that the Post-closure Fund will have inadequate resources to compensate the victims of even a few releases. This could necessitate a large tax increase or use of general revenues to pay these claims. Second, it is argued that the transfer of liability to the government diminishes the incentive to make these facilities safe over the long run. Under the scrutiny of private insurers (to avoid liability attributable to CERCLA and State tort laws), it is claimed that facility operators would continually strive to increase safety in order to keep premiums low. Little assurance that future damage is unlikely results from a lack of release during the first five years after closure. Further, because storage facilities do not pay the tax, a storage facility which switched its status to that of a disposal facility just before closure could transfer liability to the Fund without ever having paid the tax. Other such mismatches between the tax and eligibility for transfer or liability may be possible; for example, a facility with an interim status permit may be required to pay the disposal tax but, if it never receives a final RCRA permit, will never be able to transfer liability to the fund. In addition, the Post-closure Fund does not relieve waste generators and transporters from legal liability for damages caused by wastes deposited at a hazardous waste disposal facility.

On the other hand, it is argued that adequate private insurance is not available to cover the long-term liability of operators and owners of waste disposal facilities. Non-sudden environmental impairment liability insurance policies may be cancelled without cause by the insurer and are written to cover claims made during the coverage period of the insurance (claims-made basis) rather than when pollution actually occurs (occurrence basis). Such a policy would not cover any claim filed after an termination by the insurer even if the damage resulted from a release which occurred when the policy was in force. Thus, repeal of the Post-closure Fund could leave the public without protection where a policy is cancelled without cause or a facility operator becomes insolvent. Only the Federal government, it is argued, is capable of fully insuring these risks.[54]

As an alternative to repeal, one possibility is to the limit the liability of the Post-closure Fund to sites where the owner and operator are insolvent or the liability of a private party cannot be established (i.e., "insolvancy" fund). This would have the effect of making the Post-closure Fund similar to the Superfund which covers the cost of cleanup where responsible parties cannot be identified. In addition, the Post-closure Fund would supplement the Superfund by covering liability for medical costs, income losses, pain and suffering, and other items that would not be compensated by the Superfund.

Another alternative to repeal is to restructure the existing post-closure tax and trust fund more along the lines of private environmental impairment liability ("EIL") insurance policies. Under this alternative, the Federal government would set premiums for RCRA facilities based on the risk of a release into the environment and the potential damage cause by such a release. In addition, the government, like a private insurer, would require participating hazardous waste facilities to pay a certain portion of any damages. For example, participating facilities might be required to pay the first $1 million of damages resulting from a release (i.e., a "deductible"). Following the private insurance model, the government would only assume liability for claims filed during the coverage period (claims-made basis). To maintain coverage, hazardous waste facility owners might be required to pay annual premiums even after their facilities were closed under RCRA. The entrance of the Federal government into the EIL insurance market might be justified if the private insurance market were incapable of absorbing the risks associated with hazardous waste facilities. The Federal government participates in the insuring of nuclear power plants primarily for this reason.

G. Natural Resource Damage Claims

Under present law States and the Federal government may be compensated for damages to government-controlled natural resources, such as parks and wildlife. These damage payments are in addition to actual costs of cleaning up hazardous substances. The

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[54] See Department of the Treasury, *The Adequacy of Private Insurance Protection under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,* June 1983.

Administration proposal provides that the Superfund may not be used to pay these damage claims. It is argued that the present law provision diverts scarce funds from the principal purpose of the program, which is to clean up hazardous waste sites and thus prevent further damage to individuals as well as natural resources. Further, it is argued that this provision exposes the Federal government to enormous potential liabilities for which no estimates have been made. Because regulations for damage assessment have not yet been issued, only four States have filed damage claims; however, claims from these States total $2.7 billion. Once the provision is fully implemented, the amount of claims eventually could be much larger. Thus, the Administration viewed it as unwise to allow these amounts, which do nothing to promote cleanup of hazardous substances, to be paid from the Fund.

On the other hand, supporters of the current provision argue that the Superfund should be used to compensate all costs attributable to hazardous substance releases, and that cleanup costs are only a small part of the total costs which these releases impose on society. In many cases, governments whose natural resources are affected adversely will have to incur substantial expense to restore or replace these resources if they are not paid by the Fund, since solvent parties responsible for the damages often cannot be located. Of course, taxpayers finance these restoration or replacement expenditures through additional State and local taxes. Thus, if the Fund pays for these expenses, they are borne by the users and producers of chemicals and their derivatives rather than a broader group of taxpayers. Advocates of this provision argue that Fund payment of these damage claims results in a more equitable distribution of this burden.

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99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 99-253
Part 1

SUPERFUND AMENDMENTS OF 1985

AUGUST 1, 1985.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL, DISSENTING, SEPARATE AND DISSENTING, AND SEPARATE AND ADDITIONAL VIEWS

[To accompany H.R. 2817 which on June 20, 1985, was divided and referred to the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments of 1985".

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SEC. 2. CERCLA.

As used in this Act, the term "CERCLA" refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO CERCLA DEFINITIONS.

(a) Use of Term "President".—

(1) Administrator.—CERCLA is amended by striking out "President" in each place such term appears (except in subsection (e)(2) and (f) of section 301) and substituting "Administrator".

(2) Definition.—Section 101(2) of CERCLA (defining the term "Administrator") is amended by inserting the following before the semicolon at the end thereof: ", except as provided in subsection (b)".

(3) Delegations of authority.—Section 101 of CERCLA is amended by inserting "(a) In General.—" after "101." and by adding the following new subsection at the end thereof:

"(b) Use of Term 'Administrator'.—

"(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority has been retained by the President), the term 'Administrator' refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

"(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department agency or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term 'Administrator' when used in this Act refers to the Administrator of the Environmental Protection Agency.

"(3) ATSDR.—When used in section 116 of this Act, the term 'Administrator' means the Administrator of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmenal Protection Agency as specified in section 116.".

(b) RELEASE.—Section 101(22) of CERCLA is amended by inserting the following after the word "environment": "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutants or contaminants)".

(c) REMEDIAL ACTION.—Section 101(24) of CERCLA (relating to the definition of "remedy" or "remedial action") is amended as follows—

(1) Strike out "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and substitute "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;".

(2) Strike out "or" before "contaminated materials" and insert "and associated" in lieu thereof.

(d) RESPONSE.—Section 101(25) of CERCLA is amended by striking out "and" and by inserting before the semicolon at the end thereof the following: ", and enforcement activities related thereto".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding the following new sentence at the end thereof: "The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" and substituting "subsection" and by adjusting the left hand margin of the text of such subsection following the words "102 of this title" so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by adding the following at the end thereof: "The Administrator shall give primary attention to those releases which he deems may present a public health threat.".

(b) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—Section 104(a)(1) of CERCLA is amended by striking out ", unless the President determines" and all that follows down through "party".

(c) REMOVAL ACTION.—Section 104(a) of CERCLA is amended by adding the following new paragraph after paragraph (2):

"(3) REMOVAL ACTION.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.".

(d) CROSS REFERENCE.—Section 104(a) of CERCLA is amended by inserting the following new paragraph after paragraph (3):

"(4) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—The Administrator is authorized to provide for response action by potentially responsible persons in accordance with section 122.".

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and substituting "$2,000,000" and "12 months" respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with remedial action to be taken".

(f) FACILITIES OWNED AND OPERATED BY STATES.—

(1) FACILITIES OWNED AND OPERATED BY STATES.—Section 104(c)(3)(C)(ii) of CERCLA is amended by inserting "and operated" after "owned".

(2) CROSS REFERENCE TO STATE CREDITS PROVISION.—Subsection (c)(3) of section 104 of CERCLA is amended by striking out "The President shall grant the State a credit" and all that follows down through the end of such paragraph and inserting in lieu thereof the following: "The Administrator shall grant the State a credit against the share of the costs for which it is responsible under this paragraph in accordance with subsection (j)."

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by inserting the following new paragraph after paragraph (3) and by redesignating paragraph (4) as (5):

"(4) STATE CREDITS.—

"(A) CERTAIN OUT-OF-POCKET EXPENSES.— The Administrator shall treat the expenses described in this subsection as a credit against the share of the costs for which a State is responsible under paragraph (3). The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds.

"(B) BASIC CREDIT.—In the case of any facility listed on the National Priorities List under the National Contingency Plan, the credit shall include amounts expended by a State for remedial action at the facility if such amounts are expended pursuant to a contract or cooperative agreement with the Administrator.

"(C) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit shall include expenses for remedial action at a facility before the listing of the facility on the National Priorities List (NPL) or before a contract or cooperative agreement is entered into under subsection (d) for the facility. No such credit shall be allowed unless the Administrator determines that such expenses would have been credited to the State under subparagraph (B) had the expenditures been made after listing of the facility on the NPL after the date on which such contract or cooperative agreement was entered into.

"(D) ADMINISTRATIVE EXPENSES.—The credit shall include funds expended or obligated by the State or political subdivision for administration of provisions under this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

"(E) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(F) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this subsection.

"(G) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this subsection.

"(H) USE OF CREDITS.—Credits granted under this subsection may only be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions (and future maintenance thereof) at facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.".

(j) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d) of CERCLA is amended by inserting "COOPERATIVE AGREEMENTS WITH STATES.—" after "(d)" and by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.".

(k) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (8), by inserting "CONFIDENTIALITY OF INFORMATION" after "(8)", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a facility, establishment, place, or property, or, in the case of paragraph (3) or (4), at any facility, establishment, place, property, or location which is adjacent to the establishment, place, property, or location referred to in those paragraphs. Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at such facility, establishment, place, property, or location. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative referred to in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter—

"(A) The identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall (i) grant any such officer, employee, or representative access at all reasonable times to any facility, establishment, place, or property to inspect or copy all documents or records relating to such matters, or (ii) copy and furnish to the officer, employee, or representative all such documents or records, at the option of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following—

"(A) Any establishment or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

"(B) Any establishment or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any establishment or other place or property where such release is or may be threatened.

"(D) Any establishment or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) **Inspection and Samples.**—

"(A) **Authority.**—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any establishment or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) **Samples.**—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) **Compliance orders.**—

"(A) **Issuance.**—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) **Compliance.**—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions—

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) **Other authority.**—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

"(7) **Clearance.**—Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.".

(l) **Repeal of Section** 104(i).—Section 104(i) of CERCLA is repealed. For related provisions, see section 115 of this Act.

(m) **Cleanup Schedules.**—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(i) **Cleanup Schedules.**—

"(1) **Evaluation.**—Within 3 years after the enactment of this subsection, or the date of placement on the Emergency Response and Remedial Investigation System (ERRIS) list, whichever is later, all facilities listed on ERRIS shall be evaluated, in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(2) **Commencement of rifs.**—The Administrator shall insure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule—

"(A) 150 of such facilities within 12 months after the date of enactment of this subsection.

"(B) 325 of such facilities within 24 months after such date of enactment.

"(C) An additional 200 facilities within each year thereafter.

"(3) COMPLETION OF RIFS.—The Administrator shall ensure completion of remedial investigations and feasibility studies (RIFS) for no fewer than 600 facilities on the National Priorities List within the 5-year period which commences September 1, 1985. The Administrator shall submit an annual report to the Congress at the end of each year during such 5-year period specifying the RIFS which have been completed during that year.

"(4) COMMENCEMENT OF REMEDIAL ACTION.—Within 12 months after completion of Remedial Investigations and Feasibility Studies (RIFS), the Administrator shall ensure commencement of remedial action at no fewer than 90 percent of the facilities for which completed RIFS have determined that such remedial action is necessary.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) REVISION OF PLAN.—

(1) AMENDMENTS MADE BY THIS ACT.—Not later than 18 months after the enactment of this Act, the Administrator shall revise the National Contingency Plan (NCP) referred to in section 105 of CERCLA in order to reflect the amendments made by this Act.

(2) NEW RESPONSE ACTIONS.—Any provision of the NCP adopted pursuant to any other provision of law which is inconsistent with the requirements of the amendments made by this Act shall not apply to response actions commenced, after the enactment of this Act, under CERCLA.

(3) HAZARD RANKING SYSTEM.—

(A) REVIEW OF HAZARD RANKING SYSTEM.—Not later than 12 months after the enactment of this Act and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the Administrator shall commence a proceeding to review the hazard ranking system in effect under the NCP. Such review shall assure, to the maximum extent feasible, that the hazard ranking system appropriately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review.

(B) REEVALUATION NOT REQUIRED.—The Administrator shall not be required to reevaluate, after the enactment of this Act, the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of the CERCLA before such enactment and which was assigned a national priority under the National Contingency Plan.

(C) NEW INFORMATION.—Nothing in subparagraph (B) shall preclude the Administrator of the Environmental Protection Agency from taking new information into account in undertaking response actions under CERCLA.

(b) PRELIMINARY ASSESSMENT AND EVALUATION.—Section 105 of CERCLA is amended by inserting "(a) REVISION AND REPUBLICATION.—" after "105." and by adding the following new subsection at the end thereof:

"(b) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.".

(c) HAZARD RANKING SYSTEM.—Section 105(a)(8)(A) of CERCLA is amended by inserting the following after "ecosystems,": "the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(d) NATIONAL PRIORITY LIST.—Subparagraph (B) of section 105(a)(8) of CERCLA is amended as follows:

(1) Strike out "at least four hundred of" when it appears.

(2) Strike out "at least" following the word "facilities" the second time it appears.

(3) Insert "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

SEC. 106. ABATEMENT ACTIONS.

Section 106 of CERCLA is amended by adding the following new subsection after subsection (c):

"(d) Pesticides.—The Administrator shall not take action under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.".

SEC. 107. LIABILITY.

(a) Foreign Vessels.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States).".

(b) Costs and Damages.—Section 107(a)(4) of CERCLA is amended as follows—

(1) In subparagraph (A) add after "not inconsistent with the national contingency plan" the following: "and all costs incurred by the United States Government or a State under section 104(b)".

(2) Strike out "and" at the end of subparagraph (B), strike out the period at the end of subparagraph (C) and substitute "; and", and the following at the end thereof:

"(D) the costs of any health effects assessment or study carried out under such section 116; and

"(E) all other costs incurred by the United States Government before the enactment of the Comprehensive Environmental Compensation and Liability Act of 1980 and subsequent to the enactment of the Resource Conservation and Recovery Act of 1976, in response to a release or threatened release of a hazardous substance from a facility used for the storage, treatment, or disposal of hazardous substances, where such person knew or should have known of the response action and the costs are not inconsistent with the response actions provided for in subsections 101(23) and (24) of this Act.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (E). Such interest shall accrue from 90 days after the date on which the United States files an action for recovery of such amounts. The rate of interest on the outstanding unpaid balance of the amounts recoverable under paragraph (2) shall be the same rate as is applicable to investments of the Fund under section 223(b) of this Act. For purposes of applying section 223(b) in the case of interest on amounts recoverable under paragraph (2), the term 'comparable maturity' shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.".

(c) Liability for Emergency Response Actions.—(1) Section 107(d) of CERCLA is amended by striking out "damages" in each place it appears and inserting in lieu thereof "costs and damages", and by inserting before the second sentence the following: "This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.".

(2) Such section 107(d) is further amended by inserting "(1) Rendering care or advice.—" after "(d)" and adding the following new paragraph at the end thereof:

"(2) Governmental Response to Emergency.—No Federal, State, or local government agency shall be liable under this title for costs or damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a facility or site owned by another person. This paragraph shall not affect the liability of any Federal, State or local government agency for negligence.".

(d) Natural Resources.—Section 107(f) of CERCLA is amended by inserting "(1) Natural Resources Liability.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) Designation of Federal and State Officials.—

"(A) Federal.—The Administrator shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

"(B) State.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

"(C) Rebuttable presumption.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.".

(e) Federal Agencies.—Section 107(g) of CERCLA is amended to read as follows:

"(g) Federal Agencies.—For provisions relating to Federal agencies see, section 119 of this Act."

(f) Federal Lien.—Section 107 of CERCLA is amended by adding the following new subsection after subsection (j):

"(k) Federal Lien.—

"(1) In general.—All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) Duration.—The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) Notice and validity.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954. This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

"(4) Action in rem.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) Evidence of Financial Responsibility.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) Direct Action; Liability.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION IN CASE OF BANKRUPTCY, ETC.—In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or where with reasonable diligence jurisdiction in the Federal Courts cannot be obtained over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility for that person. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability under this Act of any guarantor for a facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) SECTION 103.—(1) Section 103(b)(3) of CERCLA is amended by striking out "$10,000 or imprisoned for not more than one year, or both" and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both".

(2) Section 103(b)(3) of CERCLA is amended by adding the following before the last sentence thereof: "Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.".

(3) Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.".

(b) SECTION 104.—Section 104(e)(2) of CERCLA is amended by adding the following at the end thereof:

"(E) Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.".

(c) SECTION 106.—Section 106(b) of CERCLA is amended by striking out "$5,000" and substituting "$25,000".

(d) SECTION 109.—Section 109 of CERCLA is amended by striking out "$10,000" and substituting "$25,000", by striking out the heading and substituting "PENALTIES", by inserting "(a) FAILURE TO COMPLY WITH SECTION 108.—" after "109." and by adding the following at the end thereof—

"(b) FALSE OR MISLEADING INFORMATION.—

"(1) CRIMINAL PENALTY.—Any person who submits in any notice required under section 103 any information which he knows to be false or misleading shall be imprisoned for not more than three years or fined in accordance with section 3571 of title 18 of the United States Code (or section 3623 of title 18 if applicable), or both.

"(2) CIVIL PENALTY.—Any person who submits in any notice required under section 103 any false or misleading information shall be subject to a civil penalty of not more than $25,000 for each day during which such violation continues unless such information is corrected within 30 days after the date of such submission.

"(c) ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.—Any civil penalty under this Act shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of such a penalty the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.".

(e) SECTION 112.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and substituting "in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both".

SEC. 110. TAX ON CERTAIN IMPORTED SUBSTANCES AS ALTERNATIVE TO FEDERAL SHARE.

Section 111 of CERCLA is amended by adding at the end thereof the following new subsection:

"(o) TAX ON IMPORTED SUBSTANCES.—(1) The amount authorized to be appropriated for any fiscal year under subsection (m) for deposit into the Hazardous Substances Superfund shall be reduced by the revenues estimated to be received during such year from a tax described in paragraph (2).

"(2) A tax is described in this paragraph only if—

"(A) the tax is designed to generate revenues of $140,000,000 for each of the 5 fiscal years after fiscal year 1985,

"(B) the tax is imposed on the sale by the importer of any substance which is directly or substantially manufactured or produced from materials or feedstocks consisting of 1 or more taxable chemicals (as defined in section 4662(a) of the Internal Revenue Code of 1954), and

"(C) the amount of the tax is the amount of the tax which would have been imposed by section 4661 of such Code on the taxable chemicals (as so defined) used as raw materials or feedstocks in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such substance.

If the importer does not furnish sufficient information to determine under subparagraph (C) the amount of tax imposed on any substance, the tax is described in this paragraph only if the amount of the tax imposed on such substance is 10 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) Such a tax should take effect on January 1, 1986.".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting the following immediately after "(a)": "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under section 221 not more than $1,750,000,000 for each of the 5 fiscal years commencing with October 1, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved).".

(b) USE OF FUND FOR GRANTS.—Section 111(a) of CERCLA is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and substituting "; and", and by adding the following new paragraph—at the end thereof—

"(5) the cost of grants under section 117(e) (relating to grants to citizens for technical assistance).".

(c) USES INCLUDED.—(1) Section 111(c) of CERCLA is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and substituting "; and", and by adding the following new paragraphs at the end thereof:

"(7) costs incurred by the Administrator in evaluating facilities pursuant to petitions under section 105(b);

"(8) the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party or parties; and

"(9) the costs of carrying out the research and training program under section 116(s), to the extent that such costs do not exceed the following amounts—

"(A) For the fiscal year 1986, $3,000,000.

"(B) For the fiscal year 1987, $10,000,000.

"(C) For the fiscal year 1988, $25,000,000.

"(D) For the fiscal year 1989, $35,000,000.

"(E) For the fiscal year 1990, $40,000,000.".

(2) Section 111(c)(4) of CERCLA is amended by striking out "epidemiologic studies" and substituting "epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(d) Definition of Health Assessment.—Section 111(c) of CERCLA is amended by adding the following at the end thereof: "As used in paragraph (4), the term 'health assessment' shall have the meaning provided by section 116(f)(7).

(e) Natural Resource Damage Claims.—Section 111 of CERCLA is amended as follows—

(1) In subsection (b) insert a period after "title" the first time that word appears and strike out all that follows.

(2) In subsection (c) strike out paragraphs (1) and (2).

(3) Strike out subsection (d).

(4) Strike out subsections (h) and (i).

(f) Amendments to Section 111(e).—Section 111(e) of CERCLA is amended as follows—

(1) In paragraph (1) insert "pursuant to subsection 111(a)(2)" after the word "Fund" the first time it appears.

(2) In paragraph (2) insert "(A)" before "for the purposes" and insert the following before the period at the end thereof: "and (B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C)".

(g) Inspector General.—Section 111(k) of CERCLA is amended to read as follows:

"(k) Inspector General.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following—

"(1) Audit.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this subtitle and an examination of remedial investigations and feasibility studies prepared for remedial actions.

"(2) Status report.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(3) Estimate.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.".

(h) Authorization of Appropriations.—Section 111 of CERCLA is amended by adding the following subsection after subsection (l):

"(m) General Revenue Share of Superfund.—

"(1) In General.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

"(A) For fiscal year 1986, $250,000,000.
"(B) For fiscal year 1987, $250,000,000.
"(C) For fiscal year 1988, $250,000,000.
"(D) For fiscal year 1989, $250,000,000.
"(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

"(2) Computation.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.".

(i) ATSDR.—Section 111 of CERCLA is amended by adding the following new subsection after subsection (m):

"(n) Agency for Toxic Substances and Disease Registry.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Trust Fund.".

SEC. 112. CLAIMS PROCEDURE.

Section 112(d) of CERCLA is amended to read as follows:

"(d) Statute of Limitations.—

"(1) Claims for recovery of costs.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) Minors and incompetents.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) Nationwide Service of Process.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) Nationwide Service.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) Contribution; Statute of Limitation.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (f):

"(g) Contribution.—

"(1) Contribution.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

"(2) Settlement.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

"(3) Persons not parties to settlement.—Nothing in this subsection shall affect or modify in any way the rights of—

"(A) the United States,

"(B) a State, or

"(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,

to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2). Any contribution action brought under this subsection shall be governed by Federal law. In any such action under this subsection for contribution the rights of a State and person referred to in subparagraph (C) shall be subordinated to the rights of the United States.

"(h) Statute of Limitations.—

"(1) Actions for natural resource damages.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following—

"(A) The date of the discovery of the loss.

"(B) The date on which regulations are promulgated under section 301(c).

"(2) Actions for recovery of costs.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) Contribution.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out the word "subsection" and inserting in lieu thereof the words "subsections," and inserting "and (i)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(i) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a), in any action other than one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

"(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 of this Act alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.

"(5) An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which a potentially reponsible person has made a commitment to undertake a remedial investigation and feasibility study and to implement the remedial action decision of the Administrator following review.

"(j) ADMINISTRATIVE RECORD.—

"(1) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record.

"(2) STANDARD.—In considering such objections, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

"(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) PARTICIPATION PROCEDURES.—

"(1) REGULATIONS.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, such regulations shall include procedures for providing each of the following, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—

"(A) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(B) A reasonable opportunity to comment and provide information regarding the plan.

"(C) An opportunity for a public meeting in the affected area.

"(D) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures.

"(E) Agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.".

(d) REIMBURSEMENT.—Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

"(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with section 2412 (a) and (d) of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages.

"(F) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

Section 114(c) of CERCLA is amended to read as follows—

"(c) STATE FUNDS.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.".

SEC. 115. PUBLIC HEALTH ASSESSMENT AND PROTECTION AUTHORITIES.

Title I of CERCLA is amended by inserting the following new section after section 115:

"SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

"(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an Administrator, to be known as the Agency for Toxic Substances and Disease Registry (ATSDR). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

"(b) DUTIES.—The Administrator of the ATSDR shall, with the cooperation of—

"(1) the Administrator of the Environmental Protection Agency,

"(2) the Commissioner of the Food and Drug Administration,

"(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control, "(4) the Administrator of the Occupational Safety and Health Administration, and

"(5) the Administrator of the Social Security Administration,

effectuate and implement the health-related authorities of this Act.

"(c) List of Restricted Areas.—In cooperation with the States and other agencies of the Federal Government, the Administrator of the ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances or pollutants or contaminants.

"(d) List of Substances.—

"(1) Initial 100.—The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR but within 6 months after enactment of this section, shall prepare a list of at least 100 hazardous substances or pollutants or contaminants which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priority List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

"(2) Revision.—Within 24 months after the enactment of this section, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall revise the list prepared under paragraph (1). Such revision shall include the addition of 100 or more such hazardous substances or pollutants or contaminants. The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall not less often than once every year thereafter revise such list based upon new information concerning the potential for human exposure to hazardous substances, pollutants, or contaminants at locations specified in paragraph (1) and their known or suspected toxicity to humans.

"(e) Information on Health Effects.—

"(1) Literature, studies, etc.—The Administrator of ASTDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance or pollutant or contaminant listed pursuant to subsection (d).

"(2) Toxicological profiles.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances or pollutants or contaminants under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed jointly by the Administrator of the Environmental Protection Agency and the Administrator of ATSDR. Such profiles shall include, but not be limited to—

"(A) the examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance or pollutant or contaminant in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects; and

"(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

The profiles required to be conducted under this paragraph for those hazardous substances or pollutants or contaminants listed in paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within 4 years after the enactment of this section. Additional profiles required on substances listed pursuant to this paragraph shall be completed at a rate of no less than 25 per year. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(3) Health effects research.—For any hazardous substance or pollutant or contaminant for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance or pollutant or contaminant. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance or pollutant or contaminant in combination with other hazardous substances or pollutants or contaminants with which it is commonly found.

"(4) Coordination.—In the development and implementation of any research program under this subsection, the Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances or pollutants or contaminants listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of the Environmental Protection Agency and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(f) Health Assessments.—

"(1) Facilities on NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priority List (NPL) established under section 105 which meets each of the following criteria:

"(A) The presence of a hazardous substance or pollutant or contaminant has been confirmed at the facility.

"(B) Pathways of human exposure to hazardous substances or pollutants and contaminants have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances or pollutants or contaminants.

"(C) There exists a significant possibility that a human population has been exposed to hazardous substances or pollutants or contaminants through the identified pathways and there may exist a significant threat of current or future adverse health effects for the population so exposed.

The determination of whether any facility on the NPL meets such criteria shall be based on information provided by the Administrator of the Environmental Protection Agency regarding such criteria. Nothing in this paragraph shall preclude the Administrator of the ATSDR from performing, where appropriate and consistent with the National Contingency Plan, health assessments of releases of hazardous substances or pollutants or contaminants from any other facilities, including facilities which are not listed on the NPL. The Administrator of the Environmental Protection Agency or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate the performance of health assessments under this section.

"(2) Petition to administrator of EPA.—Any individual or group of individuals may submit a petition to the Administrator of the Environmental Protection Agency to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator shall take action under paragraph (3)(A) if the Administrator determines that there is a reasonable likelihood that a hazardous substance is from one of the following facilities and that there is a reasonable likelihood that the exposure may present a significant risk to human health:

"(A) A facility where such substance is (or was in the past) treated, stored, recycled, or disposed of, on a regular basis.

"(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

"(3) Initiation or explanation required.—Within 45 days after receipt of a petition under paragraph (2), the Administrator of the Environmental Protection Agency (or the Administrator of the Agency for Toxic Substances and Disease Registry if designated by the Administrator of the Environmental Protection Agency) shall do one of the following:

"(A) Initiate a health assessment.

"(B) Publish a written explanation of one of the following:

"(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

"(ii) A determination that there is not a reasonable likelihood that the exposure presents a significant risk to human health.

"(iii) A determination that the evidence submitted or information available to the Environmental Protection Agency is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure presents a significant risk to human health. If the Administrator determines under this clause that the evidence submitted is not adequate, the Administrator shall, in the written explanation, identify the additional information necessary for the Administrator to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

"(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within 6 months after the date on which the health assessment is initiated.

"(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances or pollutants or contaminants, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7).

"(5) RIFS.—Where a health assessment is done at an NPL site, the Administrator of the ATSDR shall, to the maximum extent practicable, complete health assessments before the completion of the remedial investigation and feasibility study at the facility concerned.

"(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment shall report the results of the assessment to the Administrator of ATSDR and the Administrator of the Environmental Protection Agency and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall include the same recommendation in any report on the results of any assessment carried out directly by the ATSDR, and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term 'health assessment' means a determination of the potential individual and population human health risks posed by individual facilities. A health assessment shall be based on but not limited to the following information:

"(A) The nature and extent of contamination.

"(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

"(C) The size and potential susceptibility of the community within the likely pathways of exposure.

"(D) The comparison of measured or estimated human exposure levels which are identified for hazardous substances or pollutants or contaminants and any exposure levels for such hazardous substances or pollutants or contaminants which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

"(E) The comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.

An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of the ATSDR shall utilize appropriate data available from the Administrator of the Environmental Protection Agency to avoid duplication of effort.

"(8) PURPOSE.—The purpose of such health assessments shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances or pollutants or contaminants from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of such health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances or pollutants or contaminants including known point or nonpoint sources other than those from the facility in question.

"(9) RESULTS AND RECOMMENDATIONS.—At the completion of each health assessment the Administrator of ATSDR shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure.

"(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance or pollutant or contaminant from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

"(g) STUDIES.—

"(1) PILOT STUDIES.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(2) FULL SCALE.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances or pollutants or contaminants from a release or suspected release.

"(h) REGISTRY.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

"(1) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances or pollutants or contaminants; or

"(2) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances or pollutants or contaminants.

"(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances or pollutants or contaminants based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(j) REPORT EVERY 2 YEARS.—Two years after the enactment of this subsection and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of the Environmental Protection Agency, the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works a report on the results of the Agency's activities regarding—

"(1) health assessments conducted;

"(2) epidemiologic studies conducted;

"(3) hazardous substances or pollutants or contaminants which have been listed under subsection (d), toxicological profiles which have been developed and toxicologic testing which has been conducted or which is being conducted under subsection (e);

"(4) registries established under subsection (h); and

"(5) an overall assessment, based on the results of activities conducted by the Administrator of the ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances or pollutants or contaminants due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(k) REDUCTION OF EXPOSURE.—

"(1) SIGNIFICANT HUMAN EXPOSURE LEVEL.—If a health assessment, other study, or evaluation carried out under this Act identifies an individual or individuals exposed to a hazardous substance or pollutant or contaminant in a manner which presents a significant risk to human health, the Administrator of the Environmental Protection Agency shall take such steps as may be necessary to abate this risk. Such steps may include the following:

"(A) Provision of alternate household water supplies.

(B) Temporary or permanent relocation of individuals.

"(2) INSUFFICIENT INFORMATION.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator of the Environmental Protection Agency to determine a significant human exposure level with respect to a hazardous substance or pollutant or contaminant, the Administrator of the Environmental Protection Agency may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance or pollutant or contaminant to such level as the Administrator of the Environmental Protection Agency deems necessary to protect the human health.

"(l) NO DELAY OF OTHER ACTION.—In the case of any hazardous substance or pollutant or contaminant which is subject to a petition under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator of the Environmental Protection Agency to exercise any authority vested in the Administrator of that Agency under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

"(m) PEER REVIEW.—All studies and results of research conducted under this section (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the ATSDR.

"(n) EDUCATIONAL MATERIALS.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances or pollutants or contaminants (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

"(o) DIRECT ACTION AND COOPERATIVE AGREEMENTS.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of the ATSDR established by subsection (a), either directly or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of the ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(p) ADEQUATE PERSONNEL.—The President shall provide for the employment of an adequate number of officers and employees in the ATSDR, based upon the amount made available to such agency for each fiscal year and taking into account the recommendations of such agency.

"(q) FEDERAL FACILITIES.—In accordance with section 107(g), the Administrator of the ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

"(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of the ATSDR shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidmiological studies, or any other assistance appropriate under the circumstances. Nothing in this subsection shall be construed to create an entitlement program.

"(s) Hazardous Substance Research and Training.—

"(1) Authorities of Secretary.—The Secretary of Health and Human Services, in consultation with the Administrator of the Environmental Protection Agency may conduct and support the following (through grants, cooperative agreements, and contracts)—

"(A) Research (including epidemiologic and ecologic studies and development and demonstration programs) in the following—

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation.

"(iv) Site specific demonstrations of innovative technologies applied to all phases of hazardous substances response including, as appropriate, the testing, evaluation, and field demonstration of innovative technologies, processes, equipment, and related devices which can be used for such purposes. Such activities may be conducted at National Priorities List Sites.

"(v) Improved safety practices in, and equipment for the handling and disposal of hazardous substances.

"(B) Training for the following—

"(i) For employees who handle hazardous substances, training in the procedures for the handling and removal of hazardous substances.

"(ii) For State and local health and environment agency personnel, training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities.

"(C) Advanced training in the fields enumerated in subparagraph (A), including ecology, environmental health, chemical engineering, and molecular biology.

"(2) The Director of NIEHS shall cooperate fully with those agencies specified in paragraph (5)(A)-(F) in carrying out the purposes of this section.

"(3) Recipients of grants, etc.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with the following—

"(A) Generators of hazardous wastes.

"(B) Persons involved in the development of innovative technologies, processes, equipment, and related devices, which can be used to control, contain, and treat hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) Procedures.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences who shall follow the procedures applicable to grants and contracts under title IV of the Public Health Service Act.

"(5) Advisory council.—To assist in the implementation of this subsection, the Secretary shall appoint an advisory council which shall consist of the following—

"(A) The Assistant Administrator of the Environmental Protection Agency for the Office of Research and Development who shall serve as chairman.

"(B) The Assistant Administrator of the Environmental Protection Agency for Hazardous Waste and Environmental Response.

"(C) The Director for the Center for Environmental Health in the Centers for Disease Control.

"(D) The Director of the National Institute for Occupational Safety and Health.

"(E) The Director of the National Cancer Institute.

"(F) The Administrator of the ATSDR.

"(G) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

"(H) A representative of the toxic chemical waste producing industry.

"(I) A representative of entities engaged in the management of toxic chemical wastes.

"(J) Three representatives of institutions of higher education (one from the field of medicine, one from the field of chemical engineering, and one from the field of biological sciences).

"(K) Two representatives from State and local health or environmental agencies.

"(L) One representative from community based organizations concerned with hazardous substances.

"(M) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

"(6) PLANNING.—Within one year after the date of the enactment of this subsection the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The plan shall also include consideration of the development and evaluation of clean-up technologies to meet the standards set under section 121. The advisory council appointed under paragraph (4) shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordinating among those agencies specified in subparagraphs (A) through (G) of paragraph (5).".

SEC. 116. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate, shall take both of the following actions—

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan, if any remedial action is taken, if any enforcement action under section 106 is taken, or if any settlement or consent decree under section 106 is entered into and if such action, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess data and information which has been prepared by the

Administrator with respect to such facility and which is required to be published under this subsection.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 1/5 of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 1/5 contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this paragraph with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 117. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

"(a) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following—

"(1) A release or threat of a release of a hazardous substance or polutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

"(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(3) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

"(4) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant in any form if he determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency. As used in this subsection, the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.

"(b) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

"(c) DETERMINATION TO USE OFFSITE REMEDIAL ACTION.—Whenever any remedial action is undertaken under section 104 (or any action is undertaken under section 106), in determining whether or not to utilize offsite transport and offsite storage, treatment, destruction, or secure disposition, the Administrator shall take each of the following into account—

"(1) The long-term uncertainties associated with land disposal.

"(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

"(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

"(4) Short- and long-term potential for adverse health effects from human exposure.

"(5) The long-term maintenance costs of alternative remedial actions.

"(6) The risks associated with excavation, transportation, and disposal.".

SEC. 118. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) IN GENERAL.—Notwithstanding the provisions of section 114, no person who is a response action contractor with respect to any release or threatened release of a hazardous substance or a pollutant or contaminant from a facility shall be liable under this title, under any other Federal law, under the law of any State or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that was caused by conduct of the response action contractor which was negligent, reckless, or intentional misconduct.

"(3) PERSONS RETAINED OR HIRED.—Any person retained or hired by a response action contractor to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—Nothing in this subsection shall affect the liability under this Act or under any other authority of Federal or State law of any person other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing the liability under this title.

"(c) EXCEPTION TO EXEMPTION.—The exemption provided under subsection (a) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if he had not carried out any actions referred to in subsection (d) of this section.

"(d) DEFINITION.—For purposes of this section, a person is a 'response action contractor' with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility if such person is carrying out a written contract or agreement with—

"(1) the Administrator;

"(2) any other Federal agency;

"(3) a State; or

"(4) any potentially responsible party, as defined by section 122;

to provide any response action under this Act or to provide any evaluation, planning, engineering, design, construction, equipment, or any ancillary services thereto for such facility.

"(e) COMPETITION.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under Memoranda of Understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors."

SEC. 119. FEDERAL FACILITIES.

Title I of CERCLA is amended by inserting the following new section immediately after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act.

"(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.that

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of that Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

"(1) ESTABLISHMENT.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States which shall contain each of the following—

"(A) The inventory required to be submitted by that department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

"(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of that Act.

"(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

"(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

"(3) PERIODIC NOTICES.—6 months after establishment of the Docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the Docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the Docket.

"(d) EVALUATION.—

"(1) DEADLINE.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the Docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State the Administrator shall make such an evaluation of any facility included in the Docket.

"(2) DEADLINE FOR INCLUSION.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List (NPL), the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study (RIFS) for such facility. In the case of any facility which is listed on the NPL before the date of enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a RIFS for such facility within 1 year after such date of enactment.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each RIFS conducted as provided in paragraph (1). Within 180 days thereafter the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the RIFS. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

"(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to each of the following—

"(A) A review of alternative remedial actions and selection of a remedial action plan, including construction design by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

The concurrence of the State in which the facility is located shall be required for the selection of the remedial action to be carried out at that facility.

"(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to each of the following items—

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement;

"(C) A report on progress in conducting RIFS.

"(D) A report on progress in conducting remedial actions.

"(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the Administrator or otherwise, to any other officer or employee of the United States or to any other person.

"(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was disposed of or stored for one year or more, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage or disposal took place.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was disposed of or stored for one year or more, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain a notice of the type and quantity of such hazardous substances, notice of the time at which such disposal or storage took place, and a description of remedial action taken, if any.

"(h) Obligations Under Solid Waste Act.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(i) State Coordinator.—A State may request and be granted by the Administrator the role of on-scene coordinator for federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.".

SEC. 120. CLEANUP STANDARDS.

Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) Duty of Administrator.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. Such actions shall be in accordance with the National Contingency Plan and shall be in accordance with the requirements of this section.

"(b) Level or Standard of Control.—Any remedial action selected under section 104 or secured under section 106 for a facility at which a release or threatened release occurs shall require that level or standard of control of each hazardous substance or pollutant or contaminant at that facility which is necessary to protect human health and environment.

"(c) Selection of Remedial Action.—In selecting a remedial action under section 104 or to be secured under section 106, the Administrator shall evaluate alternatives which achieve the requirements of subsection (b) and shall assess the cost-effectiveness of such alternatives. In making such assessment, the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following—

"(1) The long-term uncertainties associated with land disposal.

"(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

"(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

"(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

"(5) Short- and long-term potential for adverse health effects from human exposure.

"(6) Long-term maintenance costs.

Following an evaluation under this subsection, the Administrator shall select that cost-effective remedial action which, to the maximum extent practicable, utilizes such permanent solutions and alternative treatment technologies or resource recovery technologies.

"(d) Onsite Remedial Action.—

"(1) In general.—This subsection shall apply only to hazardous substances or pollutants or contaminants which remain onsite. If any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act is applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant, any remedial action selected under section 104 or section 106 shall require a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such standard. In requiring a level or standard of control for such hazardous substance or pollutant or contaminant the Administrator shall consider any water quality criteria under the Federal Water Pollution Control Act which is applicable to that hazardous substance or pollutant or contaminant.

"(2) Contamination from other sources.—The level or standard of control required in accordance with this section shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

"(e) Offsite Remedial Action.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the facility is operating in compliance with such sections and only if the Administrator determines that the facility is not releasing hazardous waste or constituents thereof into the groundwater or that any such release is being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act. As used in this subsection, (1) the term 'land disposal' has the meaning provided by section 3004 of the Solid Waste Disposal Act and (2) the term 'hazardous waste' means hazardous waste listed or identified under section 3001 of that Act.

"(f) Waivers.—The Administrator may waive the application of the requirements of subsection (d) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings—

"(1) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment and is substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

"(2) The Administrator finds that compliance with the requirements of subsection (d) at that facility will result in greater risk to human health or the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

"(3) The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective.

"(4) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

"(5) The Administrator finds that the response action is an interim measure prior to final remedial action at the facility.

A finding under this subsection may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

"(g) Permits for Onsite Cleanup.—

"(1) Federal.—No permit shall be required under Federal law for any response action undertaken by any person under section 104 or 106 at any facility to the extent that such action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

"(2) State.—No permit shall be required under State or local law for any response action undertaken under section 104 or 106 at the facility at which the release or threatened release occurred. In selecting response action under this Act for such release or threatened release, the Administrator shall consider any more stringent State standards relating to the level or standard for control for the hazardous substance or pollutant or contaminant concerned and any State law regarding the siting of facilities used at the site of such response action. If the Administrator selects a response action which is not consistent with a more stringent State standard, the Administrator shall publish an explanation of the reasons for such decision. Following such publication, if the State determines that a more stringent State standard should be applicable to the response action and enters into an agreement with the Administrator to pay the additional costs attributable to compliance with the more stringent standard, the Administrator shall require the response action to conform to the more stringent State standard. The Administrator shall determine the amount of any additional costs which are attributable to compliance with the more stringent State standard in lieu of the standard which the Administrator would otherwise select. If any State pays any additional costs of complying with a State standard or requirement, the State may recover such costs from responsible parties pursuant to section 107.

"(3) Offsite.—Nothing in this subsection shall be construed to affect any requirement of Federal, State, or local law to the extent such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

"(4) FEDERAL FACILITIES.—Nothing in this subsection shall apply to any action undertaken pursuant to this Act at a facility which is owned or operated by a department, agency, or instrumentality of the United States. Nothing in this subsection or in any other provision of this Act shall preempt or otherwise affect the application of any Federal, State, or local law, including any permit requirement, to any response action undertaken at such a facility.

"(5) STATE ENVIRONMENTAL IMPACT REQUIREMENTS—Prior to commencement of a Remedial Investigation and Feasibility Study (RIFS), the Administrator shall notify the State of such action. If within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of RIFS which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be compliance with such State environmental impact statutes. This subsection shall take effect upon enactment of this section.

"(h) DESTRUCTION OF DIOXIN WASTES.—

"(1) TREATMENT TECHNOLOGY.—With respect to remedial actions involving hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

"(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

"(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

"(C) Protection against emissions of hazardous substances, pollutants, or contaminants into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

"(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

"(2) REQUIREMENTS.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

"(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

"(B) there will be no human exposure to the hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans.

"(i) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

"(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

"(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

"(j) VALUE ENGINEERING REVIEW.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State, or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances, pollutants, or contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term 'value engineering review' means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.".

SEC. 121. SETTLEMENTS.

Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) EPA Authority to Enter into Agreements.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility or vessel from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person.

"(b) Agreements With Potentially Responsible Parties.—

"(1) Mixed Funding.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

"(2) Reviewability.—The Administrator's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) Retention of funds.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(c) Effect of Agreement.—

"(1) Limitation of liability.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement. Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any limitation on liability contained in an agreement under this section.

"(2) Actions against other persons.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following—

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

"(d) Enforcement.—

"(1) Cleanup agreements.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or welfare or the environment. The entry of any such decree shall not be construed to be an acknowledgement by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment.

"(2) 104(b) agreements.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

"(e) Special Notice Procedures.—

"(1) Notice.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following—

"(A) The identity of other notice recipients.

"(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

"(2) Negotiation.—

"(A) Moratorium.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

"(B) Proposals.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

"(C) Additional parties.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) Failure to propose.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

"(4) Significant public health threats.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

"(f) Release From Liability.—

"(1) Covenant not to sue.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any future liability under this Act resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions are met—

"(A) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(B) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(C) The response action has been approved by the Administrator.

"(2) Factors.—In assessing the appropriateness of a covenant not to sue, the Administrator shall consider whether the covenant is in the public interest on the basis of such factors as the following—

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(3) CONTINGENCY FUND.—The other sources of funding referred to in paragraph (2)(E) may include any premiums paid to the Administrator by persons obtaining covenants under this section. Notwithstanding any other provision of law, the Administrator shall place such premiums in a contingency fund established by the Administrator under this paragraph. The Administrator may use the amounts placed in the contingency fund to carry out future remedial action under this section with respect to facilities which are subject to covenants not to sue under this subsection.

"(g) DE MINIMIS SETTLEMENTS.—Nothing in this Act shall be construed to prohibit the Administrator (in an action under section 106 or section 107 of this Act) from reaching final settlements with, and granting releases from liability to, any potentially responsible party in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility—

"(1) The amount of the hazardous substances contributed by that party to the facility.

"(2) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(h) DEFINITION OF POTENTIALLY RESPONSIBLE PARTY.—As used in this section, the term 'potentially responsible party' means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.".

SEC. 122. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

"(b) REIMBURSEMENT.—In accordance with rules promulgated by the Administrator, the Administrator is authorized to reimburse local community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under this section may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which such facility is located. During the 5-fiscal year period commencing September 1, 1985, not more than 0.1 percent of the total amount available in the Hazardous Substances Superfund may be used for the purposes of this section. Expenditures for reimbursement under this section shall be treated as costs of response for purposes of section 111.".

SEC. 123. LANDFILL GAS OPERATORS.

Title I of CERCLA is amended by adding the following at the end thereof:

"SEC. 124. LANDFILL GAS OPERATORS.

"(a) EXEMPTION FROM CERTAIN LIABILITY.—Notwithstanding the provisions of section 114, no landfill gas operator shall be liable in an action under section 106 or 107 of this Act, including an action for contribution or indemnification, for injuries, costs, damages, expenses, or other liability referred to in subsection (b), for costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances.

"(b) EXTENT OF EXEMPTION.—The exemption under this section shall apply to all injuries, costs, damages, expenses, for other liability asserted under section 106 or 107 of this Act, or costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances resulting from a release or threatened release of a hazardous substance or pollutant or contaminant from a facility unless such release was caused by conduct of the landfill gas operator which was negligent, reckless, or intentional misconduct. This exemption shall not apply to any landfill gas operator covered by the provisions of paragraph (1), (2), (3) or (4) of subsection (a) of section 107 with respect to the release or threatened release concerned if the landfill gas operator would be covered by those provisions if he were not a landfill gas operator.

"(c) Liability of Other Persons.—Nothing in this section shall affect the liability under this Act or under any authority of Federal or State law of any person other than a landfill gas operator.

"(d) Burden of Plaintiff.—Nothing in this section shall affect the plaintiff's burden of establishing liability under section 106 or 107 of this Act.

"(e) Condensate.—

"(1) Exclusion.—Except as provided in paragraph (2), no landfill gas operation shall be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act.

"(2) Regulation.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such condensate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act, and shall be regulated accordingly under that subtitle.

"(3) Return of condensate.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless treated so that it is no longer a free liquid.

"(f) Definitions.—As used in this section—

"(1) Landfill gas operation.—The term 'landfill gas operation' means, the installation or operation of a system for the recovery or processing of methane from a landfill (including, but not limited to, recirculation to the landfill of condensate consisting of water and other liquids removed from the gas recovered from the landfill).

"(2) Landfill gas operator.—The term 'landfill gas operator' means with respect to a release or threat of release from any facility, any person to the extent he is involved in landfill gas operation.".

SEC. 124. SECTION 3001(b)(3)(A)(i) WASTE.

Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) Revision of HRS.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priority List ('NPL') and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) Inclusion Prohibited.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the NPL any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the NPL based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST CLOSURE.

(a) REPEAL OF POST-CLOSURE PROVISIONS.—Sections 107(k) and 111(j) of CERCLA are hereby repealed. Section 101(11) of CERCLA is amended by striking out "or, in the case of" and all that follows down to the semicolon at the end thereof.

(b) POST-CLOSURE PROGRAM.—The Administrator of the Environmental Protection Agency (hereinafter referred to in this section as "the Administrator") shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste disposal sites after their closure.

(c) PROGRAM ELEMENTS.—The program under this section shall be designed to assure each of the following—

(1) Incentives shall be created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of public health or the environment.

(2) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise from the release or off-site migration of hazardous wastes from disposal sites, and to cover costs of long-term monitoring, care, and maintenance of such sites.

(3) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of public health and the environment.

(d) PROCEDURES.—In carrying out the responsibilities of this section, the Administrator shall consult with the Secretary of Commerce, the Secretary of the Treasury, and other appropriate Federal agencies.

(e) CONSIDERATION OF OPTIONS.—In conducting the study under this section, the Administrator shall consider all options which may serve the purposes set forth in subsection (c) including each of the following:

(1) Closure requirements and financial responsibility requirements.

(2) Private insurance.

(3) Insurance provided by the Federal Government.

(4) Coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government.

(5) Reinstitution of and modification to the Post-Closure Liability Trust Fund.

(6) Creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(f) RECOMMENDATIONS.—The Administrator shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement this program.

SEC. 202. NATURAL RESOURCE ASSESSMENT REGULATIONS.

Section 301(c)(1) of CERCLA is amended by striking out "two years after the enactment of this Act" and substituting "6 months after the enactment of the Superfund Amendments of 1985".

SEC. 203. TRANSPORTATION OF HAZARDOUS MATERIALS.

Section 306 of the CERCLA is amended by inserting "and regulated" after "listed" in each place it appears in subsections (a) and (b).

SEC. 204. STATE PROCEDURAL REFORM.

Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the Federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'Federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury referred to in subsection (a)(1) was caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'Federally required commencement date' means the later of the date referred to in subparagraph (A) or the following—

"(i) In the case of a minor, the date on which the minor reaches the age of majority as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to actions brought after December 11, 1980.".

SEC. 205. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and substituting "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of title I of this Act.".

SEC. 206. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE (C)(4) REGULATIONS.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

"(A) undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B)) into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

"(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in the Petroleum Release Response Account of the Hazardous Substances Superfund for payment of costs incurred for corrective action under subparagraph (A). The Administrator may issue an order to require the owner or operator of an underground storage tank to comply with subparagraph (B). Any violation of such an order shall be enforced in the same manner as provided in the case of an order under section 9006.

"(2) After (c)(4) regulations.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date the Administrator may undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B)) into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator, to protect human health and the environment and one or more of the following situations exists—

"(A) No person can be found who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

"(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

"(3) Recovery of costs.—

"(A) In general.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (4), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) Interim limit on liability.—(i) Until a determination is made under subparagraph (C), the maximum liability under this paragraph shall be $3,000,000 for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs.

"(ii) If additional corrective action is required to respond to a release of petroleum from an underground storage tank which occurs after completion of prior corrective action in response to an earlier release, the maximum liability under this paragraph shall be $3,000,000 for such subsequent corrective action.

"(iii) The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

"(C) Permanent regulations.—At the time financial responsibility regulations are promulgated by the Administrator under this section, the Administrator shall determine whether limitations on the liability imposed under subparagraph (A) are appropriate. If the Administrator determines that such limitations are appropriate, he may promulgate regulations establishing limits on such liability applicable to various categories of owners and operators and adjusting the $3,000,000 limitation established under subparagraph (B). Such regulations shall take into consideration the following factors—

"(i) The volume of petroleum handled at the types of facilities involved.

"(ii) The effect of liability under this section on the small business segment of the petroleum marketing industry.

"(iii) The results of studies and actions undertaken in accordance with subsection (d).

"(iv) Such other factors as the Administrator may deem pertinent.

"(D) Limitations inapplicable.—Notwithstanding the limitations on liability contained in paragraph (B) of this subsection, the liability of a person under this subsection shall be the full and total costs incurred by the Administrator or the State in undertaking corrective action in either of the following circumstances—

"(i) Where the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person.

"(ii) Where the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with corrective action activities under this Act.

"(E) Contracts, etc. not affected.—Nothing in this subsection shall be deemed to affect or modify in any way, contracts or other agreements between owners, operators, or third parties, or the responsibilities of these parties as defined in regulations promulgated under section 9003 of this Act.

"(F) Facility.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(4) Corrective action.—The corrective action undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned. The costs of such study shall not be treated as corrective action for purposes of paragraph (4), relating to cost recovery.

"(5) State authorities.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), and (3) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make grants to the State from the Petroleum Release Account of the Hazardous Substance Response Trust Fund. Such grants shall be apportioned among the States applying for grants based upon the number of underground storage tanks located in the respective States determined on the basis of information available to the Administrator under this subtitle.

"(6) Definition of owner.—As used in this subsection the term 'owner' shall not include any mortgagee or other person who owns a security interest in the tank or who has acquired title to the tank by reason of a mortgage or other security interest.".

(c) Petroleum Release Response Account.—

(1) Creation of account.—There is established in the Hazardous Substances Superfund a separate account to be known as the "Petroleum Release Response Account" (hereinafter in this section referred to as the "Separate Account"). The Separate Account shall consist of the following amounts—

(A) Amounts appropriated or transferred to the Separate Account as provided in the Internal Revenue Code of 1954.

(B) Amounts credited to the Separate Account under paragraph (2) of section 223(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(C) Amounts recovered under section 9003(h) of the Solid Waste Disposal Act.

(2) Expenditures from account.—Amounts in the Separate Account are authorized to be appropriated for purposes of corrective action undertaken by the Administrator pursuant to section 9003(h) of the Solid Waste Disposal Act and for purposes of administration and enforcement of the provisions of this subsection. Such amounts shall be available only for such purposes.

(d) Study.—The Administrator of the Environmental Protection Agency shall conduct a study of availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of independent petroleum marketers and the ability of independent petroleum marketers to maintain financial responsibility through other methods. The study shall consider to what extent, if any, the placement of limitations on liability for corrective action costs by owners or operators of underground storage tanks will have on the availability of such insurance. The study shall consider the experience of owners or operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate. The Administrator shall report his findings to the Congress within 9 months of the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable independent petroleum marketers to maintain financial responsibility sufficient to provide for all clean-up costs and damages that may result from reasonably foreseeable releases and events.

SEC. 207. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) Authority to Bring Civil Actions.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

"(2) against—

"(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

"(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency, or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

"(b) Venue.—

"(1) Actions under subsection (a)(1).—Any action under paragraph (1) of subsection (a) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) Actions under subsection (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

"(c) Relief.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

"(d) Subsection (a)(1) Actions.—

"(1) Notice.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or disposal—

"(A) to the Administrator;

"(B) to the State in which the alleged violation occurs; and

"(C) to any alleged violator.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

"(2) Actions under paragraph (1).—No action may be commenced under subsection (a)(1) with respect to any violation referred to in such subparagraph if the Administrator has commenced and is diligently pursuing an action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.

"(e) Subsection (a)(2) Actions.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(f) Costs.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) Other Rights.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

"(h) **Intervention.**—In any action under this section the United States, if not a party, may intervene as a matter of right.

"(i) **Definitions.**—The terms used in this section shall have the same meaning as when used in title I.".

SEC. 208. INDIAN TRIBES.

(a) **In General.**—Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 127. INDIAN TRIBES.

"(a) **Definition.**—As used in this Act, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

"(b) **Future Maintenance and Cost-Sharing Requirements.**—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

"(1) Land or water held by an Indian tribe.

"(2) Land or water held by the United States in trust for Indians.

"(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

"(4) Land or water otherwise within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

"(c) **Contracts or Cooperative Agreements.**—

"(1) **Authority.**—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

"(2) **Enforcement.**—If the President enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

"(d) **Natural Resources Liability.**—

"(1) **Liability to tribe.**—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

"(2) **Exemptions.**—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following—

"(A) The damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environment analysis.

"(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

"(3) **Recovery.**—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

"(e) Delegation.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

"(f) Application of Other Provisions.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).".

(b) Conforming Amendments.—(1) Section 101(a)(16) of CERCLA is amended by striking "or" the last time it appears and by inserting before the semicolon at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(2) Section 107 of CERCLA is amended as follows:

(A) In subsection (a), insert "or an Indian tribe" after "State".

(B) In subsection (i), insert "or Indian tribe" after "State" the first time it appears.

(C) In subsection (j), insert "or Indian tribe" after "State" the first time it appears.

SEC. 209. COMMENCEMENT OF DRILLING FLUIDS, ETC. STUDY.

The Administrator of the Environmental Protection Agency shall commence the study required under section 8002(m) of the Solid Waste Disposal Act not later than 6 months after the date of the enactment of this Act.

SEC. 210. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(g) Insurability Study.—

"(1) Study group.—The Administrator shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

"(A) 2 representatives of the Administrator.

"(B) 4 representatives of persons described in paragraph (2).

"(C) 2 representatives of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

"(D) 3 representatives of property and casualty insurers.

"(E) 1 representative of reinsurers.

A representative of the Administrator shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

"(2) Study.—The study group shall undertake a study to determine the insurability of the liability of the following:

"(A) Persons who generate hazardous substances: liability for costs under this Act.

"(B) Persons who own or operate facilities: liability for costs under this Act.

"(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

"(3) Item evaluated.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following—

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of persons upon whom it is imposed under this Act on the underwriting and pricing of insurance coverage.

"(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding enactment of this subsection.

"(G) Other impediments to insurability.

"(4) SUBMISSION.—The report shall be submitted to the Congress with appropriate recommendations, within 18 months after the enactment of the Superfund Amendments of 1985.".

SEC. 211. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States or the District of Columbia.

"SEC. 402. STATE LAWS.

"Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from any State law, rule, or order described in paragraph (1) through (4)—

"(1) A law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State.

"(4) A law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following—

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process. Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(F) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(G) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initate such a proceeding after notice of a finding of financial impairment under subparagraph (F).

"(c) Application of Exemptions.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(c) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) Exemption.—Except as provided in this section, a purchasing group is exempt from any State law, rule, or order described in paragraphs (1) through (8)—

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) Application of Exemptions.—The exemptions specified in subsection (a) apply to the following—

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group—

"(A) Pollution liability insurance, and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) Ownership Interests.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) Investment Company Act.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) Blue Sky Law.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 212. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

Title I of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 126. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

"(a) Review.—The Administrator shall conduct a review of State programs to protect public health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The review shall only be conducted in the case of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

"(b) Enforcement.—

"(1) Determination.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that public health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of public health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

"(2) Civil action.—The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of the public health or the environment may require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

"(c) Deadlines.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of enactment of this section.

"(d) Definition.—For purposes of this section, the term 'annular injection' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well."

TITLE III—COMMUNITY RIGHT TO KNOW AND EMERGENCY PLANNING

SUBTITLE A—COMMUNITY RIGHT-TO-KNOW

SEC. 301. BASIC NOTIFICATION REQUIREMENTS.

(a) **MATERIAL SAFETY DATA SHEETS.**—

(1) **BASIC REQUIREMENT.**—Each owner or operator of a facility at which a hazardous chemical (as defined in section 324) is produced, used, or stored shall file a material safety data sheet for such hazardous chemical with the State and local officials designated under section 302. Whenever a material safety data sheet is revised (as required under regulations under the Occupational Safety and Health Act of 1970) each such facility owner or operator shall file, as promptly as practicable but not later than 3 months after such revision, the revised material safety data sheet with such State and local officials.

(2) **CONTENTS OF SHEET.**—Each material safety data sheet required to be filed under this subsection shall contain the same items of information as are required for material safety data sheets developed under regulations under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1910.1200(g)).

(b) **EFFECTIVE DATE.**—The requirements of this section shall take effect on July 1, 1986.

SEC. 302. PUBLIC AVAILABILITY OF MATERIAL SAFETY DATA SHEETS.

(a) **DESIGNATION OF OFFICIALS.**—Before May 1, 1986, the Governor of each State shall designate appropriate State and local (or regional) agencies within such State as required recipients of information under this subtitle for facility owners and operators located within that State or, in the case of a local or regional agency, facility owners and operators located within the political subdivision or combination of political subdivisions concerned. Designations under this subsection may be revised as may be appropriate.

(b) **AVAILABILITY TO PUBLIC.**—Each agency designated under subsection (a) which has received any material safety data sheet shall make such sheet available to interested members of the public.

SEC. 303. AVAILABILITY OF MATERIAL SAFETY DATA SHEETS TO OTHER OWNERS AND OPERATORS.

(a) **BASIC REQUIREMENT.**—Each facility owner or operator who supplies a hazardous chemical to any other facility owner or operator shall furnish a material safety data sheet to each such other facility owner or operator. Such sheet shall be transmitted before (or at the time of)—

(1) the initial shipment by such facility owner or operator to the other facility owner or operator; and

(2) the first shipment by such facility owner or operator to the other facility owner or operator following any revision of a material safety data sheet previously transmitted by such facility owner or operator to such other facility owner or operator.

(b) **PROVIDING OF SHEET.**—Any material safety data sheet required to be furnished to a facility owner or operator under this section in connection with a shipment may be provided with the shipment or sent to the facility owner or operator separately prior to the time of shipment.

(c) **UNAVAILABILITY FROM MANUFACTURER OR IMPORTER.**—Except for a facility owner or operator who is a manufacturer or importer of the hazardous chemical, the requirements set forth in this section and in section 301 shall not apply to a facility owner or operator who has not received a material safety data sheet for such hazardous chemical from the person who supplied such hazardous chemical to such facility owner or operator. However, such facility owner or operator shall make reasonable efforts, and shall document such efforts, to obtain a material safety data sheet by contacting the manufacturer or importer who supplied the hazardous chemical and requesting the manufacturer or importer to send the sheet.

(d) **EFFECTIVE DATE.**—The requirements of this section shall take effect with respect to shipments after May 1, 1986.

SEC. 304. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) **DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.**—A facility owner or operator required to file a material safety data sheet under section 301 shall provide the specific chemical identity of a hazardous chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(3) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Following such a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a substance under section 323 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) Medical Emergency.—A facility owner or operator required to file a material safety data sheet under section 301 shall provide a copy of the material safety data sheet, including the specific chemical identity of a hazardous chemical, to any treating physician or nurse who requests such information if such physician or nurse determines—

(1) that a medical emergency exists;

(2) the specific chemical identity of the hazardous chemical is necessary for emergency or first-aid diagnosis or treatment;

(3) the individual or individuals being diagnosed or treated have been exposed to the substance concerned; and

(4) knowledge of the specific chemical identity of such substance will assist in diagnosis or treatment.

Immediately following such a request, the facility owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a substance from a material safety data sheet under section 323 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the facility owner or operator disclosing such information may require a written confidentiality statement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (4) as soon as circumstances permit.

(c) Preventive Measures by State and Local Health Professionals.—(1) A facility owner or operator required to file a material safety data sheet under section 301 shall provide the specific chemical identity of a hazardous chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a State or local government employee or a person under contract with the State or local government, and

(B) who requests such information in writing and provides a written statement of need under this subsection and a written agreement of confidentiality under subsection (d).

(2) The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess the hazards of the chemicals to which persons living in a State or local community will be exposed.

(B) To conduct or assess sampling of the atmosphere to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

Following such a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the State or local health professional. The authority to withhold the specific chemical identity of a substance under section 323 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(d) Confidentiality Agreement.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. The confidentiality agreement under this subsection may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing non-contractual remedies to the extent permitted by law.

Subtitle B—Emergency Response

SEC. 311. EMERGENCY RESPONSE PLANNING.

(a) State Commissions; Local Committees.—Within 90 days after the enactment of this section, the Governor of each State shall appoint a Hazardous Substance Emergency Response Commission for that State (or designate one or more existing State-sponsored or appointed emergency response organizations within the State) to coordinate response planning in the State for hazardous substance emergencies. Within 120 days of such appointment or designation, the Commission shall designate local Emergency Response Committees to develop Emergency Response Plans for their communities. Representatives of the affected community shall be represented on each Emergency Response Committee designated under this subsection. Upon request, the Commission shall provide assistance to the local Emergency Response Committees in developing and implementing Emergency Response Plans.

(b) Preparation of Plans.—Each local Emergency Response Committee shall prepare a proposed Emergency Response Plan under this section. The plan shall be developed by the Committee in consultation with those persons or organizations which would be expected to play a major role in the event of a hazardous substance emergency, including owners and operators of facilities at which substantial inventories of hazardous substances are maintained, elected officials, law enforcement and firefighting personnel, public health, medical, hospital, and environmental protection personnel, civil defense personnel, transportation officials, and representatives of broadcast and print media. The proposed plan shall be made available to the public within 14 months of Committee formation. The Committee shall provide a period of 60 days for public comment. The Committee shall conduct a public hearing no later than 25 days after the comment period begins. A final plan shall be published by the Committee before the date 20 months after formation of the Committee. The final plan shall be accompanied by the Committee's response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period. Upon request from an Emergency Response Committee, a facility owner or operator shall provide assistance to the Committee in developing and implementing Emergency Response Plans affecting that owner or operator's facility.

(c) Contents of Plan.—

(1) In general.—Each emergency response plan under this section shall be designed to minimize injury to human health and the environment in the event of a hazardous substance emergency. The plan shall be integrated with existing emergency response plans at the discretion of the Emergency Response Committee.

(2) Elements.—The plan shall contain at least the elements listed below:

(A) The names and telephone numbers of emergency response personnel at each facility in the community at which a substantial inventory of a hazardous substance is maintained.

(B) A designation of those State or local officials in charge of responding to a hazardous substance emergency and those officials who are to be notified under section 312 in case of a hazardous substance emergency.

(C) A description of notification procedures and communications systems (including alarm and warning systems) to be used in the event of a hazardous substance emergency.

(D) A description of emergency equipment and facilities in the community, and at each facility in the community at which a substantial inventory of a hazardous substance is maintained, and an identification of the persons responsible for such equipment and facilities.

(E) A description of the types of measures that may be taken to mitigate and minimize the risks to human health and the environment posed by various types of hazardous substance emergencies.

(F) Emergency evacuation plans, as well as an evaluation of the adequacy of existing transportation facilities to accomplish an evacuation.

(G) A description of training programs and drill schedules to be used for purposes of emergency response planning and preparedness.

(H) An evaluation of medical, police, and firefighting resources available in the event of a hazardous substance emergency and recommendations, if appropriate, concerning what additional resources should be designated by State or local governments for responding to such emergency.

SEC. 312. EMERGENCY INFORMATION.

(a) IMMEDIATE NOTICE.—The facility owner or operator of a facility at which a hazardous substance emergency occurs shall immediately provide notice of the occurrence of the emergency to the State and local officials who have been designated to receive such notification in the Emergency Response Plan for the community in which the facility is located. Such notice shall include as much of the information referred to in subsection (c) as is known to the owner or operator at the time notice under this subsection is provided.

(b) EMERGENCY BULLETIN.—As soon as practicable after a hazardous substance emergency, the facility owner or operator of the facility at which the hazardous substance emergency occurred shall furnish an emergency bulletin under this section to the State and local officials who have been designated to receive such bulletins in the Emergency Response Plan for the community in which the facility is located. Such officials shall make the emergency bulletin available to interested members of the public.

(c) CONTENTS OF EMERGENCY BULLETIN.—Each emergency bulletin under this section shall include a full description of the hazardous substance emergency, including, at a minimum—

(1) the chemical name or identity of the hazardous substance involved in the emergency,

(2) an estimate of the quantity of such substance that was released into the environment during the emergency,

(3) the time and duration of the release,

(4) the actions taken to respond to and contain the release, and

(5) any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

SUBTITLE C—GENERAL PROVISIONS

SEC. 321. STATE AND LOCAL LAW.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this title shall be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals.

(b) EFFECT ON MSDS REQUIREMENTS.—

(1) Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 301. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet, through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(2) Any State or local law—

(A) enacted after August 1, 1985, and

(B) which requires a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator,

shall be identical to the requirements under section 303.

SEC. 322. ENFORCEMENT.

(a) CIVIL PENALTIES.—(1) Any person who violates any provision of this title by failing to—

(A) file or furnish a material safety data sheet as required by section 301;

(B) provide information to a physician or nurse in accordance with section 304(b);

(C) furnish notice or an emergency bulletin as required by section 312; or

(D) furnish information withheld from a material safety data sheet under section 323(a) when requested by the Administrator of the Environmental Protection Agency as part of a review under section 323(b);

shall be liable to the United States for a civil penalty in an amount not to exceed $20,000 for each such violation.

(2) Any manufacturer or importer who fails to comply with any requirements under section 303 is liable to the United States for a civil penalty in an amount not to exceed $5,000 per violation.

(b) COLLECTION OF PENALTY.—Any civil penalty for which a person is liable under this title shall be collected in an action brought by the United States in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(c) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 304.—Whenever any facility owner or operator required to provide information under section 304(b) to a doctor or nurse who has requested such information fails or refuses to provide such information in accordance with section 304(b), such doctor or nurse may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 304(b).

SEC. 323. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION FROM MSDS.—With regard to a hazardous chemical, any facility owner or operator required to file a material safety data sheet under section 301 may withhold from such sheet the specific chemical identity, including the chemical name and other specific identification, as defined in regulations prescribed by the Administrator of the Environmental Protection Agency under subsection (b), if the claim that the information withheld is a trade secret can be supported by showing that—

(1) the facility owner or operator has not disclosed the information to any other person, other than an employee of such facility owner or operator or a person who is bound by a confidentiality agreement,

(2) the information is not required to be disclosed to the public under any other Federal or State law, and

(3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

(b) TRADE SECRET REGULATIONS.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency shall prescribe trade secret regulations which are identical (except for provisions relating to the procedure for the review of petitions challenging trade secret claims, and any minor conforming changes the Administrator considers appropriate), consistent with subsection (a), to the provisions concerning trade secrets in the Occupational Safety and Health Administration Hazard Communication Standard and any revisions of such trade secret provisions prescribed by the Secretary of Labor in accordance with the ruling of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL-CIO-CLC* v. *Thorne G. Auchter*.

(2) PETITION FOR REVIEW.—The Administrator of the Environmental Protection Agency shall establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim made by a facility owner or operator under this section. Any appropriate United States district court shall have jurisdiction to review a determination by the Administration under this section.

(3) TIMETABLE.—The Administrator shall prescribe the regulations under paragraph (1) as soon as practicable after the date of the enactment of this Act, and shall prescribe the regulations under paragraph (2) no later than 4 months after the date on which the regulations under paragraph (1) become final.

Nothing in this section or regulations adopted pursuant to this section shall authorize any person to withhold information which is required to be provided to a health professional or a doctor or nurse in accordance with section 304.

SEC. 324. DEFINITIONS FOR TITLE III.

As used in this title—

(1) COMMISSION.—The term "Commission" means a Hazardous Substance Emergency Response Commission (or other existing organization) designated by a Governor under section 311.

(2) HAZARDOUS CHEMICAL.—The term "hazardous chemical" means any substance which is treated as a "hazardous chemical" pursuant to the Occupational Safety and Health Administration's Hazard Communication Standard (presently codified in 29 C.F.R. section 1910.1200), except that the following substances shall not be treated as a "hazardous chemical" for purposes of this title:

(A) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(B) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical under normal conditions of use.

(C) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(D) Any substance to the extent it is used in a laboratory, hospital, or medical facility under the direct supervision of a technically qualified individual.

(E) Any substance to the extent it is used in routine agricultural operations.

(3) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means a material safety data sheet developed for a hazardous chemical pursuant to the hazard communication regulations promulgated under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1910.1200).

(4) FACILITY OWNER OR OPERATOR.—The term "facility owner or operator" means the owner or operator of a facility at which a hazardous chemical is produced, used, or stored.

(5) PERSON.—The term "person" means any individual, corporation, partnership, association, or other entity.

(6) HAZARDOUS SUBSTANCE EMERGENCY.—The term "hazardous substance emergency" means a release of a hazardous substance which meets one or more of the following criteria—

(A) The release is unexpected.

(B) The release is not continuous and is substantially in excess of the normal amounts released as a result of routine manufacturing, processing, or storage.

(C) The release is in amounts which require notification of the Administrator of the Environmental Protection Agency under CERCLA and which constitute a substantial threat to the public health and environment. The Administrator of the Environmental Protection Agency shall promulgate regulations to carry out this subparagraph.

(7) HAZARDOUS SUBSTANCE.—

(A) IN GENERAL.—The term "hazardous substance" means a TLV hazardous substance, a combustible liquid, a flammable gas, a flammable liquid, a flammable solid, or a reactive substance which may present an imminent and substantial endangerment to public health.

(B) TERMS USED IN SUBPARAGRAPH (A).—The terms "combustible liquid", "flammable gas", "flammable liquid", "flammable solid", and "reactive substance" shall have the same meaning as when used in the hazard communication regulations under the Occupational Safety and Health Act (presently codified at 29 C.F.R. 1910.1200). The term "TLV hazardous substance" means any substance for which a Threshold Limit Value (TLV) of—

(i) 10 parts per million (ppm) or less, or

(ii) 3 mg per cubic meter or less

has been established by the American Conference of Governmental Industrial Hygienists.

(C) MIXTURES.—(i) A mixture shall be deemed to be a "combustible liquid", a "flammable gas", a "flammable liquid", a "flammable solid", or a "reactive substance", as appropriate, if—

(I) it meets the definition of any of such terms when tested as a whole; or

(II) if the mixture has not been tested as a whole, it is determined by the facility owner or operator to be a "combustible liquid", a "flammable gas", a "flammable liquid", a "flammable solid", or a "reactive substance" based upon an evaluation of whatever scientifically valid data are available.

(ii) A mixture shall be deemed to be a "TLV hazardous substance" if—

(I) it qualifies as such a substance when tested as a whole; or

(II) if the mixture has not been tested as a whole, it contains, by weight or volume, 1 percent or more (0.1 percent or more in the case of a carcinogen) of such a substance.

SEC. 325. EXEMPTION.

This title shall not apply during the transportation, including the storage incident to such transportation, of any hazardous chemical or hazardous substance if such transportation is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968.

TITLE IV—PROVISIONS RELATING TO TAXATION

SEC. 401. 5-YEAR EXTENSION.

(a) In General.—

(1) Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended as follows:

(A) Strike out "$900,000,000" and substitute "$4,900,000,000".

(B) Strike out "$500,000,000" and substitute "$2,700,000,000".

(C) Strike out "1985", "1983", and "1984" and substitute "1990", "1988", and "1989" respectively.

(2) Section 303 of the CERCLA is hereby repealed.

(b) Effective Date.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 402. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) Repeal of Tax.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) Repeal of Trust Fund.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 403. TAX ON CHEMICAL FEEDSTOCKS.

(a) In General.—Subchapter B of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on certain chemicals) is amended to read as follows:

"Subchapter B—Tax on Certain Chemicals

"Sec. 4661. Imposition of tax.
"Sec. 4662. Definitions and special rules.

"SEC. 4661. IMPOSITION OF TAX.

"(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

"(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"In the case of:	The tax is the following amount per ton:
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14

Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

"(c) Termination.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4662. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions.—For purposes of this subchapter—

"(1) Taxable chemical.—Except as provided in subsection (b), the term 'taxable chemical' means any substance—

"(A) which is listed in the table under section 4661(b), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) United states.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(3) Importer.—The term 'importer' means the person entering the taxable chemical for consumption, use, or warehousing.

"(4) Ton.—The term 'ton' means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

"(5) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) Exceptions; Other Special Rules.—For purposes of this subchapter—

"(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).

"(2) Substances used in the production of fertilizer.—

"(A) In general.—In the case of a nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

"(B) Qualified fertilizer substance.—For purposes of this section, the term 'qualified fertilizer substance' means any substance—

"(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified fertilizer use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

"(C) Qualified fertilizer use.—The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

"(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(3) Sulfuric acid produced as a byproduct of air pollution control.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

"(4) Substances derived from coal.—For purposes of this subchapter, the term 'taxable chemical' shall not include any substance to the extent derived from coal.

"(5) Substances used in the production of motor fuel, etc.—

"(A) In general.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

"(B) Qualified fuel substance.—For purposes of this section, the term 'qualified fuel substance' means any substance—

"(i) used in a qualified fuel use by the manufacturer, producer, or importer, "(ii) sold for use by any purchaser in a qualified fuel use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

"(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term 'qualified fuel use' means—

"(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

"(ii) any use as such a fuel.

"(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

"(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

"(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

"(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

"(ii) any solution or mixture containing any chemical described in clause (i).

"(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

"(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

"(c) USE BY MANUFACTURER, ETC., CONSIDERED SALE.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(d) REFUND OR CREDIT FOR CERTAIN USES.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any taxable chemical, and

"(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

"(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

"(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

"(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1985.

SEC. 404. WASTE END TAX.

There shall be imposed under the Internal Revenue Code of 1954 a waste end tax sufficient to raise revenues in the amount of $300,000,000 in each of the 5 fiscal years after fiscal year 1985 for deposit into the Hazardous Substance Response Trust Fund established by section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 405. BROAD-BASED TAX.

There shall be imposed under the Internal Revenue Code of 1954 a broad-based corporate tax sufficient to raise revenues in the amount of $900,000,000 in each of the 5 fiscal years after fiscal year 1985 for deposit in the Hazardous Substance Response Trust Fund established by section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 406. TAX FOR PETROLEUM RELEASE RESPONSE ACCOUNT.

There shall be imposed under the Internal Revenue Code of 1954 such taxes as are necessary to raise revenues in the amount of $250,000,000 in each of the 5 fiscal years after the fiscal year 1985 for deposit in the Petroleum Release Response Account established under section 206 of this Act (the "Separate Account"). No amount of such taxes shall be imposed during fiscal year 1988 or 1989 or 1990 if on September 30 of the preceding fiscal year, the unobligated balance of the Petroleum Release Response Account (the "Separate Account") exceeds $250,000,000.

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PURPOSE AND SUMMARY

H.R. 2817 amends the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund") to provide $10 billion in additional funding over the next five years to clean up the Nation's worst abandoned hazardous waste sites and uncontrolled leaking underground storage tanks. The bill establishes a schedule for the Environmental Protection Agency's (EPA) cleanup activities; establishes national cleanup standards for Superfund sites; establishes a program to insure the cleanup of waste sites owned by the Federal government; establishes a program for research and training in relation to hazardous substances; clarifies the authorities of the EPA to enter into settlements with parties responsible for Superfund sites; provides assistance to the states in fulfilling their role in the Superfund program; enhances EPA response and enforcement authority; gives citizens the right to participate in cleanup decisions; strengthens the role of the Agency for Toxic Substances and Disease Registry in determining the effects of hazardous substances on human health; and insures the cleanup of leaking underground storage tanks where responsible parties cannot be identified. In addition to establishing certain taxes, the bill authorizes appropriations of $250,000,000 in each of the next five years.

H.R. 2817 will revitalize the Superfund program to permit substantial progress in addressing one of our most pressing environment problems—the protection of the public from hazardous chemical substances.

BACKGROUND AND NEED FOR THE LEGISLATION

The Superfund program to clean up abandoned hazardous waste sites is one of this Nation's most important environmental programs designed to protect human health and the environment. It is also the most beleagered program the Environmental Protection Agency (EPA) administers. If enacted, H.R. 2817 would give EPA the flexibility to revitalize the Superfund program, ensure cleanup of abandoned hazardous chemicals, and protect human health and the environment.

Superfund was passed in 1980 to address what many believed was a relatively limited problem. The EPA was instructed to find 400 hazardous waste sites. Most believed that cleaning up a site was relatively inexpensive and involved removing containers or scraping a few inches of soil off the ground. The Agency was given $1.6 billion to administer the cleanup of the 400 sites.

Today, five years later, our understanding of the problem posed by abandoned hazardous chemicals is entirely different. The Office of Technology Assessment now estimates there may be as many as 10,000 Superfund sites across the Nation, or an average of 23 sites per Congressional district. These sites range from industrial plants to river beds to city dumps where small businesses and households have disposed of solvents, paints and cleaning fluids. We now understand that a cleanup frequently goes far beyond simple removal of barrels. It often involves years of pumping contaminated water from aquifers. The total cost of completing the Superfund program is estimated to be as much as $100 billion. The total time will be decades.

The resources given to EPA were simply inadequate to fulfill the promises that were made to clean up abandoned hazardous wastes in this country. With political pressure on EPA to treat every site discovered as a high priority, EPA was virtually guaranteed to fail from the moment CERCLA passed in 1980.

To compound the problem the first administrator of the Superfund program undermined the intent of the program. Under the initial leadership of Assistant Administrator Lavelle, the program was victimized by gross mismanagement and policies which limited expenditures for site cleanups, in part in an effort to dissuade Congress from extending the funding for the program beyond its scheduled expiration date of October 1, 1985.

As a result of the intensive investigation of the Superfund program by the Energy and Commerce Committee's Subcommittee on Oversight and Investigations in 1982 and 1983, over twenty top-level officials, including the Administrator of EPA, resigned or were fired from their jobs. Assistant Administrator Lavelle is currently serving a jail term.

Understandably, the combination of promises which could never be kept with the limited resources available and the gross mismanagement of the program, have created mistrust in the public and in Congress.

The current reauthorization, coming when it does, forces Congress to face a very fundamental policy question: how to ensure in the future that there are adequate resources, and to see that past, thoroughly repudiated, mismanagement problems are behind us.

H.R. 2817 has been written with the underlying belief that Congress should focus on ways to ensure rapid and through cleanup of abandoned hazardous wastes rather than on past mistakes. It is clear from the accumulating data on waste sites that EPA will never have adequate monies or manpower to address the problem itself. As a result, an underlying principle of H.R. 2817 is that Congress must facilitate cleanups of hazardous substances by the responsible parties while assuring a strong EPA oversight role with a set of tough legal enforcement standards. Equally important is the role of the communities around Superfund sites. It is here that we can ensure that cleanups and post-cleanup maintenance of the sites are carried out in compliance with the cleanup agreements for the sites.

If the new law was overly detailed and restricted in its prescription of how the agency should operate Superfund, it would almost surely doom the program to future failures. Congressional oversight is the way to ensure diligent and good faith behavior from an Agency. Public confidence in the Agency will further erode, and five years from now the public will again be clamoring for effective action to clean up hazardous waste.

Unrealistic time schedules, standards impossible to enforce, and program requirements that exceed funding are all problems established by the investigation of the Oversight and Investigations Subcommittee as contributing to the appalling failures of EPA in the past. To reenact such provisions as caused some of the previous problems would hardly ensure rapid and effective cleanup of Superfund sites.

H.R. 2817 builds on existing law and significantly strengthens the Superfund statute in all respects. An important change, however, is to provide EPA with appropriate flexibility and discretion in order to respond appropriately to each site in the multiplicity of Superfund sites which exist in this Nation.

A summary of the major provisions follows:

CLEANUP SCHEDULES

Within three years, EPA is to evaluate the roughly 20,000 sites currently on its inventory of hazardous waste sites. Those sites which are found to present the most serious threat to human health and the environment are to be placed on the National Priorities List (NPL). NPL sites are to be permanently cleaned up using Superfund money or funds provided by responsible parties. EPA would be required to begin remedial investigation and feasibility studies (RIFS) for all NPL sites according to the schedule: 150 sites within one year, 175 additional sites within two years, and 200 additional sites each year thereafter for the five years of the program. EPA would be required to complete at least 600 RIFS within a five year period. Within 12 months after completion of cleanup studies, EPA would be required to begin remedial cleanup actions at no fewer than 90 percent of the sites for which completed studies have determined that such action is necessary.

This bill does not require EPA to complete each RIFS or each remedial cleanup within a specific time period. As the Office of Technology Assessment (OTA) has found, each hazardous waste site is unique. In addition, many cleanup technologies are just being developed and, in fact, "cost-effective permanent cleanup technologies have not yet been developed for some [toxic waste] problems." The legislation reflects a concern that to require EPA to complete cleanups before it has adequately assessed the site or before it knows how to perform a permanent cleanup would make little environmental or economic sense, and would likely produce cleanups that are temporary, requiring further expenditures to correct those mistakes.

If Congress were to delcare, for example, that all cleanup studies must take no more than one year and that all cleanups must be completed in two years, EPA would probably select only the easiest and most expeditious of cleanups and perform quick and dirty, temporary cleanups on the sites they addressed. Moreover, the Agency would probably spend much time in litigation over its failure to satisfy these unrealistic deadlines.

The schedule in the bill is designed to confront the unpleasant realities involved in cleaning up toxic waste sites by establishing overall parameters and schedules for the cleanup effort, while leaving the EPA sufficient flexibility to address site-specific problems.

EMERGENCY RESPONSE AUTHORITIES

The EPA Administrator would be given greater power than that provided in the current law to respond to a release or threatened release of a hazardous substance. EPA would be authorized to spend up to $2 million over a period fo 12 months (previously, initial limits were $1 million and six months). The Administrator could exceed these limits if a continued response action would otherwise be appropriate and consistent with a permanent remedy.

CLEANUP STANDARDS

All cleanups must protect human health and the environment. Cleanups must be cost-effective and utilize, to the maximum extent practicable, permanent solutions and alternative treatment technologies or resource recovery technologies. The intended result is permanent and significant decreases in the toxicity, mobility or volume of the hazardous substance, pollutant, or contaminant at each site.

At a minimum, all onsite cleanups must satisfy standards under other Federal environmental laws, although several limited waivers of specific standards are provided. These would allow the Administrator to waive the application of cleanup standards of other laws in specific, defined circumstances. These waivers are designed to avoid the situation where a cleanup remedy strictly following the standards in another environmental statute could produce an illogical or counterproductive result under this legislation. For example, a cleanup of PCBs in contaminated rivers, like the Hudson, to achieve a cleanup envisioned by the Toxic Substances Control Act, could require dredging. This, in turn, could result in greater exposure and threat to public health from the disturbed PCBs than might otherwise result. Such an illogical remedy could also cause serious harm to the river's ecosystem.

The EPA Administrator would be required to explain, in a public meeting at or near the hazardous waste site, the proposed cleanup and any waivers of cleanup standards from other environmental statutes. But the bill allows no waiver of the fundamental requirement, which is to protect human health and the environment.

In remedial cleanups that involve offsite disposal of hazardous substances, the hazardous substances may be transferred only to a facility which is operating in compliance with the Solid Waste Disposal Act (RCRA). In addition, the facility must not be releasing hazardous substances into the grounder or if there are such releases, they are being controlled by an appropriate corrective action under the Solid Waste Disposal Act.

PERMANENT CLEANUPS

The bias in existing law which favors on-site, remedies, i.e., land disposal, has been removed. This change emphasizes the value of treatment and alternative technologies and should help solve the problem of proliferating hazardous waste sites. The problem arises when waste from one Superfund site is merely transferred to another site, where it leaks, creating another, new Superfund site. The EPA Administrator is explicitly directed to select efficient and permanent cleanups, when possible, that will contribute to the long-term solution of the hazardous waste problem.

PUBLIC HEALTH ASSESSMENTS

Under this legislation, citizens are empowered to petition EPA to perform a health assessment at an NPL site. EPA must make specific findings and respond to the health petition within 45 days. The Agency for Toxic Substances and Disease Registry in the Public Health Service would be given explicit responsibilities, and the coordination between the Registry and the EPA would be improved so as to enhance public health. The initiation of research to determine the health effects of hazardous substances, pollutants, or contaminants, the creation of health surveillance programs to aid those at risk and the establishment of health registries are among the activities contemplated under the bill.

PUBLIC PARTICIPATION

Specific procedures would be established to allow local citizens to participate in the cleanup process. Before adoption of any remedial cleanup plan, EPA would inform affected persons and the local community of the plan selected and alternative plans that were considered, in order to provide full opportunity for public comment. The EPA would respond to all significant public comments concerning the proposed cleanup. Grants would be available to help communities understand the proposal and allow them to comment in a meaningful manner. In addition, a public meeting would be held at or near the hazardous waste facility, for discussiosn of the proposed cleanup plan.

FEDERAL FACILITIES

According to a September 1984 General Accounting Office report, there are at least 340 potential Federal civilian hazardous waste sites. Yet EPA regional offices had no knowledge of actions taken at these Federal facilities. In addition, the Defense Department has identified 473 bases with potential hazardous waste sites. These sites may be some of the worst in the Nation. To address this problem, Federal hazardous waste sites would be made part of the Superfund program and placed on a schedule for cleanup. Each Federal agency would be required to reqeust adequate funding in the President's annual budget for cleanups. This should insure expeditious cleanup of these dangerous sites.

SETTLEMENTS

Some have criticized the existing program for spending more on wasteful litigation than on actual cleanups. This bill would clarify EPA's authority to enter into settlement agreements. The settlement procedures now set forth are expected to be a significant inducement for parties to come forth, to settle, to avoid wasteful litigation and thus to begin cleanup. EPA would also be able to settle with and grant releases to potentially responsible parties whose contribution to the hazardous waste at the site was minimal.

JUDICIAL REVIEW

Sweetheart deals of the sort exposed by the Committee's investigations of earlier Superfund management abuses would be prevented, by requiring all voluntary agreements to be filed as consent degrees with a Federal District Court. Further, the court could review the agreement, with citizen participation, to insure that it is in the public interest. To avoid delay of cleanups and to minimize litigation, responsible parties would be allowed to challenge the cleanup remedy after acknowledging liability for the hazardous waste site.

CONTRIBUTION ACTIONS

The bill would give potentially responsible parties the explicit right to sue other liable or potentially liable parties who also may be responsible for the hazardous waste site. If a party has resolved its liability to the U.S. or a state in a judicially-approved, good-faith settlement, the party would not be liable for claims for contribution or indemnity on matters addressed in the settlement. These provisions should encourage quicker, more equitable settlements, decrease litigation and thus facilitate cleanups.

COMMUNITY RIGHT TO KNOW

A program is established that will provide the public with important information on the hazardous chemicals in their communities. The program would require each owner or operator of a facility at which a hazardous chemical is produced, used, or stored to supply information on material safety data sheets (MSDS) about each hazardous chemical to state and local officials. The state and local officials, designated by the Governor of each state, would make this information available to the public.

Material safety data sheets are governed by the Hazard Communication Standard promulgated under the Occupational Safety and Health Act of 1970. Any withholding of information from these sheets must satisfy trade secret regulations to be prescribed by the EPA Administrator in accordance with existing law and is reviewable in court. Upon written request by a health professional, for purposes of diagnosis, treatment or to conduct a prevention study, a facility owner or operator would have to provide the specific chemical identity of a hazardous chemical, even if such information is a trade secret

All existing state and local laws (as of August 1, 1985) which require the submission of information related to hazardous chemicals remain intact, as there would be no Federal pre-emption. A state or locality may also require the submission of supplemental information which could be attached to the data sheet. Any state or local law enacted after August 1, 1985 governing the availability and contents of material safety data sheets would be required to be identical to Federal law. This should create national uniformity in hazardous chemical reporting that should minimize costs, while allowing emergency response personnel to benefit from having one basic system of data. Other than these two restrictions, states and localities would have the latitude to enact laws governing hazardous chemicals as they wish.

EMERGENCY RESPONSE PLANNING

Local Emergency Response Committees would be formed to develop Emergency Response Plans for their communities. Such plans are to be designed to protect the public from emergency releases of hazardous substances. The development of the plans would involve public participation.

LEAKING UNDERGROUND STORAGE TANKS

The bill would establish a $1.25 billion account for the cleanup of leaking underground petroleum storage tanks. EPA would have authority to force owners and operators of tanks to clean up leaks, but if there is no owner or operator capable of carrying out the cleanup, EPA would perform the cleanup. The liability for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs would initially be $3 million. This limitation would not apply if the owner or operator fails to cooperate or the release was the result of willful misconduct or willful negligence. After the EPA Administrator promulgates regulations for underground petroleum tanks, the Administrator could change the liability limitation.

To protect human health, EPA would be authorized to provide temporary or permanent relocation of residents and alternative household water supplies in connection with cleanups of leaking underground storage tanks.

HAZARDOUS SUBSTANCE RESEARCH AND TRAINING

The legislation would establish a $113 million five-year research and training program, operated by the Secretary of Health and Human Services and the EPA Administrator. Grants would go for research on the health effects of hazardous substances and how to assess, detect and evaluate such health effects; how to detect hazardous substances in the environment; methods for reducing the toxicity of hazardous substances; innovative cleanup technologies; and improved safety practices in handling hazardous substances.

FEDERAL FUNDING FOR GROUNDWATER TREATMENT

The treatment of ground and surface water contamination, in order to restore the water quality to a level that assures protection of human health and the environment, is defined as a remedial action. This means that the completion of such actions would not be considered as maintenance, for which the states must pay for completely; rather, the EPA would pay 90 percent of these costs, while the states would pay 10 percent of these costs.

STATE ENVIRONMENTAL LAWS GOVERNING CLEANUP

For cleanups that do not involve offsite transfer of a hazardous substance, EPA would be required to consider any state standards that might require a more stringent level of control than the Federal level. If the EPA Administrator were then to select a cleanup which would not satisfy the more stringent state standard, he or she would be required to publish an explanation of the reasons for this decision. If the state still desired the more stringent level of control, the Administrator would have to require the cleanup to satisfy the more stingent state standard, but the state would pay the additional costs. The state could recover these costs from responsible parties.

For cleanup actions involving the transfer of hazardous substances offsite, state and local permits would control. (In certain limited situations, state or local requirements would not apply to the transfer of hazardous substances to a facility in which a final permit under the Solid Waste Disposal Act is in effect.) The cleanup of Federal facilities, onsite and offsite, must comply with state and local law. Finally, prior to the Commencement of an RIFS, EPA must follow procedures functionally equivalent to any state requirement for an environmental impact assessment if the state requests.

REIMBURSEMENT TO LOCAL GOVERNMENTS

EPA would be authorized to reimburse local governments for the costs they incur in carrying out emergency measures necessary to protect health and the environment due to the release, or threatened release, of hazardous substances, pollutants or contaminants. Reimbursement would be limited to $25,000 per response.

CITIZEN SUITS

Citizens are given the right to sue any person, including any governmental body, alleged to be in violation of any Superfund requirement. In addition, citizens may sue EPA or any other governmental body where there is an alleged failure to perform a mandatory (nondiscretionary) act or duty.

RESPONSE ACTION CONTRACTORS

Contractors who clean up a site would be given certain protections from Superfund liability. These response contractors would, however, remain liable for the harm caused by their own negligence. This should help speed up cleanups and increase the pool of contractors who are available and willing to clean up hazardous waste sites.

HEARINGS

The Subcommittee on Commerce, Transportation, and Tourism held three days of hearings, on March 7, March 21 and April 2, 1985, on Superfund reauthorization and related issues.

Testimony was received from Mr. Milton Socolar, Special Assistant to the Comptroller General of the United States, U.S. General

Accounting Office (accompanied by Mr. Hugh G. Wessinger, Senior Associate Director, and Mr. Victor Rezendes, Group Director); the Honorable Lee Thomas, Administrator, Environmental Protection Agency; Mr. Michael T. Kelley, Deputy Assistant to the Secretary for Basic Industry, U.S. Department of Commerce (accompanied by Mr. Vincent Kamenicky, Director, Office of Chemicals, Department of Commerce, and Ms. Linda Fisher, Executive Assistant to the Administrator, Environmental Protection Agency); Mr. Ronald Whitfield, Vice President, DRI Chemical Service, Data Resources, Inc.; Mr. Robert Forney, Executive Vice President, Dupont; Mr. Robert J. Muth, Executive Vice President, ASARCO Incorporated; Dr. Suellen Pirages, Director of Chemical Wastes, National Solid Waste Management Association; Mr. J. Burgess Winter, Senior Vice President, Operations, Kennecott; Mr. David Mallino, Deputy Legislative Director, Industrial Union Department, AFL-CIO; Mr. Carl Crowe, Assistant to the President, Louisiana AFL-CIO; Mr. Timothy P. Ryan, Director, Division of Business and Economic Research, University of New Orleans; Mr. W.H. Clark, Jr. (President and Chairman of the Board, Chief Executive Officer, NELCO Chemical Company), representing the Chemical Manufacturer's Association; Mr. Charles J. DiBona, President, American Petroleum Institute; Mr. John Paul (Director of Government Affairs, AMAX Inc.), representing the American Mining Congress (accompanied by Mr. Rod Dwyer, Senior Counsel, and Mr. John Austin, Vice President, American Mining Congress); Mr. William C. Rusnack, Vice President of Manufacturing, ARCO Petroleum Products Company; Mr. Leslie Dach, National Audubon Society; Ms. Janet Hathaway, Congress Watch; Mr. Rick Hind, U.S. PIRG; Ms. Martha Broad, Natural Resources Defense Council; Mr. A. Blakeman Early, Sierra Club; Mr. Brian Turner, Legislative Director, Industrial Union Department, AFL-CIO; Mr. John Brown, Legislative Director, International Union of Operating Engineers, AFL-CIO; Mr. Dick Warden, Legislative Director, United Auto Workers AFL-CIO; Mr. Jack Sheehan, Legislative Director, United Steelworkers of America, AFL-CIO; Mr. Jay Power, Legislative Representative, AFL-CIO; Mr. Norman Nosenchuck (Director, New York State Department of Environmental Conservation, Division of Solid and Hazardous Waste), representing the Association of State and Territorial Solid Waste Management Officials; Mr. Dennis R. Connolly, Vice President, American Insurance Association; Mr. John Henningson (Vice President, Malcolm Pirni Inc.), representing the American Consulting Engineers Council (accompanied by Paul Genecki, Senior Vice President, Victor O. Schinnerer & Co.); and Mr. Charles Schwenck (General Counsel, Fluor Engineers Inc.), representing the National Constructors Associations.

COMMITTEE CONSIDERATION

On June 25, 1985, the Subcommittee on Commerce, Transportation, and Tourism met in open session and ordered reported the bill H.R. 2817, as amended, by a voice vote, a quorum being present. On July 16, 17, 18, 23, 24 and 25, 1985, the Committee met in open session and on July 25, 1985, ordered reported the bill H.R. 2817 with amendment by a recorded vote of 31 to 10, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee anticipates that H.R. 2817 would generate tax revenues of $1.75 billion per year for the fiscal years 1986 through 1990. The bill authorizes appropriations from the general revenue of $250 million per year over the same 5-year period. Costs recovered by the government for Fund-financed cleanups at Superfund sites would be used to offset the contribution from general revenues. All sums would be available to support cleanup and related activities required by the bill. The Committee anticipates that the estimated $10 billion that would be generated through taxes and appropriations from the general revenues will be sufficient to pay for the activities required by the bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2817, the Superfund Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2817.
2. Bill title: Superfund Amendments of 1985.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce, July 24, 1985.
4. Bill purpose: H.R. 2817 would reauthorize, amend, and expand Public Law 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The bill would authorize appropriations of up to $1.75 billion a year for the period

1986 through 1990, to be financed through a combination of general fund appropriations (up to $250 million a year) and tax revenues.

The bill would earmark appropriations of not less than $30 million a year for activities performed by the Agency for Toxic Substances and Disease Registry and a total of $113 million over five years to the Department of Health and Human Services for hazardous substance research and training activities.

Under current law, the taxes imposed under CERCLA to fund Superfund will expire September 30, 1985. Title IV of the bill would extend through 1990 the taxes on crude oil and chemical foodstocks at existing rates. Further, the bill would establish a new exemption from the feedstock tax for substances used in the production of animal feed. The bill also would have Congress impose three new taxes—a waste end tax, a broad-based corporate tax, and a tax to fund the cleanup of underground storage tank leaks. The bill specifies that these taxes should increase revenues by $300 million, $900 million, and $250 million, respectively, for each fiscal year through 1990. Revenues from these taxes would be credited to the Superfund, with revenues from the third credited to a special Petroleum Reserve Release Response Account within the fund. No details are specified in the bill for these new taxes.

Finally, H.R. 2817 would repeal provisions in CERCLA and the Internal Revenue Code pertaining to the Post-Closure Liability Fund and Tax. No provision has been made in the bill for the disposition of funds that have been collected under the post-closure process.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Spending effects:					
Estimated authorization level	2,000	2,000	2,000	2,000	2,000
Estimated outlays	900	1,600	1,900	2,000	2,000
Revenue effects:					
Estimated revenues from excise taxes	1,713	1,740	1,750	1,759	1,768
Less: Income tax offset	428	435	438	440	442
Estimated net revenues	1,285	1,305	1,313	1,319	1,326
Total budget impact:					
Estimated revenues	1,285	1,305	1,313	1,319	1,326
Estimated outlays	900	1,600	1,900	2,000	2,000
Estimated increase (+) or Decrease (−) in deficit	−385	295	588	681	674

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate, it is assumed that the new taxes will be imposed at rates sufficient to raise the revenues specified by the bill. Estimated revenue from taxes on feedstock chemicals and crude oil based on an extension of current law tax collections, adjusted for the added exemption for taxable chemicals used in the production of animal feed.

The authorization levels are those stated in the bill. Although the bill contains no specific authorization of appropriations from the Petroleum Release Response Account, based on information from the Commmittee staff, CBO has assumed that it is the intent of the bill that $250 million would be authorized from that account each year, in addition to the $1.75 billion authorized in Section 111. Outlays from the Superfund have been estimated on the basis of historical spending patterns and on information obtained from the Environmental Protection Agency.

General fund appropriations to the Superfund would be offset each year by an amount equal to the prior year's recoveries from responsible parties. Such offsets are estimated to total $225 million through fiscal year 1990. Section 110 of the bill would provide that each year's general fund appropriations to the Superfund would also be offset by any amounts estimated to be collected from a tax on certain imported substances, if such a tax is imposed and meets certain requirements specified in the bill. Authorized appropriations and outlays from the fund would not be affected by these offsets, but revenues would be increased by the amount of tax collected. To meet the requirements specified in the bill, such a tax would have to increase revenues by $140 million annually from 1986 to 1990. These amounts are not included in the cost estimate table.

Section 119 of the bill would set requirements for federal agencies in handling hazardous waste at federal facilities. Each agency would be required to include in its annual budget request sufficient funds to complete remedial actions at these sites. CBO does not expect these requirements to result in any significant budget impact, because many such actions are already underway. For example, $314 million was appropriated to the Department of Defense (DOD) in 1985 for this purpose. (The Department has projected that it will spend about $1.6 billion throught 1993 to clean up sites on DOD lands. Most of the cleanup by civilian agencies would fall under the jurisdictions of the Department of the Interior and the Department of Energy.)

When compared to the House Budget Committee baseline, the net revenue increase under H.R. 2817 would range from $1,076 million in 1986 to $1,087 million in 1990. The increase relative to the baseline is smaller than that shown in the table above, because the baseline assumes extension of Superfund taxes at current rates.

6. Estimated cost to State and local governments: A number of provisions of H.R. 2817 would affect the budgets of state governments. The bill would amend Section 104 of CERCLA to grant credits to states for expenses incurred between January 1, 1978 and enactment of the 1980 Act. Credit would also be granted for state cleanup expenses at sites owned but not operated by the state. No estimated of the amount of these credits is currently available.

In addition, the bill would require states to coordinate data collection and emergency response planning activities within the state. The costs of the these activities are not expected to be significant.

Finally, this bill would effectively repeal the provision of current law that preempts state taxing authority. This provision would enable states to impose any type of taxes necessary for purposes of recouping state cleanup costs and related expenses.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis and Neil Fisher.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee is unaware of any inflationary impact on the economy that will result from the passage of H.R. 2817.

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2—Short title and amendment to CERCLA

The short title of the legislation is the "Superfund Amendments of 1985." The legislation contains amendments to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Internal Revenue Code, and the Solid Waste Disposal Act. Any reference to "current law," "Superfund," or "CERCLA"should be construed as a reference to the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

Section 101—Amendments to CERCLA definitions

The section revises the definition of "Administrator" under current law to reflect presidential delegation of authority to EPA and other agencies made prior to enactment of the legislation, except with respect to Federal facilities, where the legislation establishes special rules for such delegations of authority.

The section adds language to the definition of "environment" under CERCLA which clarifies the intent of current law to include in the definition the abandonment or discarding of barrels, containers or other closed recepticles. The change will clarify EPA's existing authority to take response actions with respect to such receptacles, whether or not they have broken open and are currently leaking hazardous substances, pollutants or contaminants into the environment.

The section modifies the definition of "remedy or remedial action" under CERCLA to explicitly include the off-site transport, storage or secure disposition of hazardous substances, pollutants or contaminants. Under current law, the definition imposes criteria which must be met before the President may undertake off-site disposal of hazardous substances. This creates a bias against off-site disposal. This provision eliminates the statutory bias for on-site remedies by making the statute neutral with regard to on-site or off-site remedies. The change will made it easier for the Administrator of the Environmental Protection Agency (hereinafter "Administrator") to pursue permanent off-site remedies, such as treatment, where it is apprpriate to protect human health and the environment.

The section also modifies the definition of "response action" to include related enforcement activities. The change will confirm the

EPA's authority to recover costs for enforcement actions taken against responsible parties.

Section 102—Reportable quantities

This section requires the Administrator to promulgate regulations establishing reportable quantities for releases of hazardous substances by December 31, 1986.

Section 102 of current law requires the Administrator to promulgate such regulations designating qauntities for hazardous substances which, when released into the environment, must be reported to the Administrator. The EPA has not promulgated a complete set of these regulations at this time. The Committee is concerned about the EPA's failure to promulgate these regulations since they are needed to ensure protection of human health and the environment and the proper functioning of the Superfund program.

Section 103—Notices; penalties

This section is a technical change in the paragraphing of section 103 of CERCLA. The change clarifies the intent of current law to apply the penalties for failure to file notifications of hazardous substance releases to persons in charge of vessels, as well as facilities.

Section 104—Response authorities

The changes made under this section are intended to clarify and strengthen EPA's authority to respond to releases or threatened releases of hazardous substances, pollutants or contaminants. The section also sets out, and in some instances changes, the financial relationship between EPA and the states.

The section requires that, in conducting response actions under CERCLA, the administrator must give primary attention to those releases which present a public health threat.

The section strikes the phrase in section 104(a)(1) of current law "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility . . . or by any other responsible party." The amendment clarifies and confirms that the President has the discretion to decide when responsible parties are authorized to conduct cleanup in lieu of Fund-financed response. It is the Committee's intent, however, that the Administrator should use private parties whenever possible to conduct such actions if it will not delay cleanup.

This provision is not intended to preclude or discourage responsible parties from conducting cleanup actions without the formal permission of the Federal government. The current requirements of section 105 of CERCLA (National Contingency Plan) contemplate a significant role for private parties in response actions.

The section amends current law to require that any short-term removal action undertaken by the Administrator shall contribute, to the maximum extent practicable, to the efficient performance of any long-term remedial action to be taken with respect to a release or threatened relese.

This provision is intended to clarify the Committee's intent that permanent solutions to problem facilities should be sought whenever possible. The provision is not intended to remove any discretion from the Administrator in selecting short-term and long-term solutions to the problems based on his case-by-case evaluations. Also, the language in this provision is not intended to constitute a defense for responsible parties who may seek to avoid paying for monies expended by the Agency for cleaning up a given facility.

The section further provides that any such short-term removal action would be limited to $2,000,000 in cost or 12 months in duration unless the Administrator determines that continued removal action is consistent with any plans for long-term remedial action.

Under current law, section 104(c)(1) limits removal actions to six months in duration and $1 million in cost unless certain waiver criteria are met. The Administrator must find that continued action is necessary to prevent or mitigate the emergency and to protect public health and the environment, and that assistance would not otherwise be provided on a timely basis. Because of the limits established in this section, some removals have been scaled-down below the level needed to achieve a cost-effective response.

This provision would extend the statutory limits on removal actions and would provide an additional criterion for waiving statutory limits. The new criterion would permit removals to exceed the $2 million cost and one-year duration limitations if the response action is "appropriate and consistent with a permanent remedy." The provision would ensure that removals accomplish a more complete response, if such response is appropriate in that situation.

The primary effect of this provision would be to enhance the Administrator's ability to choose the most effective response in removal situations. Generally, the section would allow, where appropriate, the first operable units of remedial actions to be considered removals. This would provide the Agency with increased flexibility to initiate quickly the appropriate removal. The Committee believes that this ability to implement a response quickly would enchance efforts to contain the migration of hazardous substances. In turn, this would result in increased public health and environmental protection and may be less costly since hazardous substances could be contained before they migrate to a much larger area requiring greater response.

The section imposes a 50 percent cost-sharing requirement (or such greater share as the Administrator may determine) on states only for the cleanup of facilities which they both owned and operated. Current law is silent on the question of privately operated waste disposal facilities on state land which have become Superfund sites. As interpreted currently by EPA, states are directly responsible for such sites and must pay 50 percent of such cleanups. It is the intent of the Committee that where a state did not operate the site directly—either the site was operated by a private party or the state has come into ownership of the site through legal proceedings such as bankruptcy, failure to pay taxes, etc.—that the state should not be responsible for a 50 percent match before the fund will clean up the site. This provision would clarify current law by specifying that where the state did not operate the site the state would be responsible only for a 10 percent matching share. In addition, the section provides that where a state has expended more than 10 percent of the costs of cleanup at facilities which they owned but did not operate and where such expenditures were made after passage of current law but before the date of enactment of this legislation that the state shall receive a credit for such expenditures in excess of 10 percent.

The section grants the states credits for monies that the Administration determines were expended on cost-eligible response actions at National Priorities List sites where cost were incurred after January 1, 1978, but before passage of current law.

The section provides that the states may apply reasonable administrative costs, as determined by the Administrator in consulation with the states, associated with running their Superfund programs towards their matching shares. It is the Committee's intent that this provision track the current arrangements being made between EPA and the states which will allow for administrative expenses.

The section also establishes a state cost credit provision for sites on the National Priorities List and sites which have not at the time of the expenditures been listed on the NPL.

While the Committee believes there is a need to clarify the relationship between EPA and the states in certain cost-sharing arrangements and to establish authority for the states to expend their own monies with the expectation that such monies will be repaid through credits for Superfund cleanups, the Committee has several concerns about including these provisions in the statute. One major concern is that the matching and credit provisions should not become gaping loopholes allowing the states to spend Federal Superfund monies without strict EPA oversight. Another concern is that it would be unacceptable if one state or a small group of states were able to dominate the overall national agenda for cleaning up Superfund sites by spending state monies on relatively low priority sites and forcing EPA to administer or monitor cleanups at those sites while being unable to pursue higher priority sites in other states.

For these reasons, several important restrictions are put on the cost-sharing provisions in this section:

—Expenditures made at sites on the National Priorities List may be credited only if they are made pursuant to a contract or cooperative agreement with the Administrator;

—Expenditures made at sites not listed on the National Priorities List may be credited only after the site is listed on the NPL and only if the Administrator determines that such expense would have been credited to the State if the site had been on the National Priorities List and been under contract or cooperative agreement with the Administrator;

—All expenditures for which the state expects a credit must be reasonable, as determined by the Administrator, and the expenditures that will be eligible for credits must be documented, direct, out-of-pocket expenditures of non-Federal funds;

—The Administrator will have the authority to require prior item-by-item approval of all expenditures made after the date of enactment of this provision. If the state does not seek such approval, the Administrator may refuse to allow a credit for those funds;

—The credits granted under this section may only be used by a state to reduce costs at Superfund sites and shall not entitle any State to a direct payment.

The Committee intends that the requirement that the expenses be reasonable, documented, direct, out-of-pocket expenditures of non-federal funds be strictly applied based on EPA audits providing verification of claimed expenditures. For example, the Administrator must find that the claimed costs are supported by an acceptable accounting system, including adequate recordkeeping, and that invoice verification has adequate independent support verification. Further, the definition of "reasonable" would not include expenditures associated with a large scale cleanup which lasted for a period of months and was performed with minimal regard to the cost-effectiveness and cost impact of the cleanup effort.

The Committee feels that the state cost-sharing provisions adopted will aid the Superfund program as long as EPA retains control to set national priorities for cleaning up sites in all states.

The section directs the Agency to consider long-term cleanup of groundwater, surface water or soil contamination as part of the costs of remedial action. The provison was included to ensure that EPA considers all costs associated with cleanup at a site. Concern had been raised that if long-term cleanup remedies, such as pumping and treating of groundwater, were not identified explicitly as a legitimate remedial action cost, EPA might look to less expensive, less permanent remedies than might be warrented by the circumstances. States were concerned that long-term actions to clean up the site in a manner needed to protect human health would be left to the states to finance 100 percent. Accordingly, this provision has been included to encourage EPA to consider all costs associated with a site cleanup and to choose permanent cleanup solutions for Superfund sites, including destruction of hazardous substances, pollutants or contaminants and total cleanup of contaminated groundwater.

The section provides that, for the purposes of determining the need for a response action, the Administrator or duly designated officials may obtain information (including samples of hazardous substances, pollutants or contaminants) from any person who has generated, stored, treated, recycled or disposed of such materials. The section further provides that the Administrator may take such other action—including but not limited to issuing orders requiring submission of information or samples—as may be necessary to implement the law's provisions. The section also states that the owner or operator of any facilitiy where a hazardous substance, pollutant or contaminant is located, as well as the owner or occupant of any adjacent property, shall permit access to such facility or property by any representative of the Administrator or any duly designated officals. Such access shall occur at reasonable times and for reasonable duration and no person shall interfere with such entry.

The section would give the Administrator authority to issue an order directing compliance with an informaton or access request and to ask the Attorney General to commence a civil action to compel compliance with the order.

The Committee has been concerned that EPA has had difficulty gaining access to facilities and gathering information or conducting cleanup activities necessary to achieve the goals of Superfund. This provision clarifies and strengthens the authorities of EPA to achieve these tasks.

This section repeals section 104(i) of current law relating to the Agency for Toxic Substances and Disease Registry. These authorities are transferred to new section 116 CERCLA (section 115 of this bill) and are expended.

Finally, the section contains a cleanup schedule for the Superfund program.

The section requires that within three years, EPA must evaluate the roughly 20,000 sites currently on its inventory of hazardous waste sites. Those sites which are found to present the most serious threat to human health and the environment are to be placed on the National Priorities List (NPL). EPA is required to begin remedial investigation and feasibility studies for all NPL sites according to the schedule: 150 sites within a year, 175 additional sites within two years, and 200 additional sites each year thereafter. EPA is required to complete at least 600 RIFs within a five year period. Within 12 months after completion of cleanup studies, EPA is required to begin remedial cleanup actions at no fewer than 90 percent of the sites for which studies have been completed.

Consistent with the findings of the Congressional Office of Technology Assessment (OTA), this bill refrains from requiring EPA to complete each RIFs or each remedial cleanup within a specific time period. As OTA has found, each hazardous waste site is unique. In addition, many cleanup technologies are just being developed and, in fact, "cost-effective permanent cleanup technologies have not yet been developed for some [toxic waste] problems." To require EPA to complete cleanups before it has adequately assessed the site or before it knows how to perform a permanent cleanup makes little environmental or economic sense, and is likely to produce cleanups that are temporary, requiring further expenditures to correct the mistakes. Given the number of sites demanding attention, EPA cannot afford to waste either its time or its money on incomplete cleanups.

Although it would be politically attractive to legislate that all remedial investigations and feasibility studies must take no more than one year and that all cleanups must be completed in two years, such provisions would be irresponsible. In the short term, such provisions would force EPA to select only the easiest and most expeditious cleanups while delaying the complex cleanups which usually pose the greatest threats to human health. In the long term, such provisions would only serve to set the Superfund program on a path for failure, consuming much of the Agency's resources in expensive litigation arguing why it cannot satisfy urelealistic Congressional deadlines.

The schedule included in H.R. 2817 recognizes the unpleasant realities involved in cleaning up toxic waste sites by establishing overall parameters and schedules for the cleanup effort while leaving the EPA sufficient flexibility to address site-specific problems.

Section 105—National contingency plan

This section requires the Administrator within 18 months of the date of enactment to revise the National Contingency Plan to reflect the amendments made by this legislation. It states that the legislation does not require the Administrator to reevaluate any site listed on the National Priorities List before the date of enactment. However, the Committee believes any new information developed as a result of the amendments should, whenever appropriate, be considered by the Agency in developing the Superfund program.

The section would require the Administrator to commence a review of the hazard ranking system (HRS or "Mitre Model") used to evaluate the priorities attached to Superfund sites. It has become clear, as the HRS has been applied to an increasing number of situations, that the model has biases built into it which do not necessarily reflect the actual threat a particular site may pose to human health or the environment. For instance, the Committee is concerned that Louisiana clay may not be an impermeable natural barrier because of evidence suggesting that hazardous substances are leaching through clay toward groundwater supplies. In addition, the Committee believes there are reasons to give special consideration in this review to the contamination of land areas vulnerable to flooding. The Committee believes EPA should reevaluate the HRS model used, taking into account the experience EPA and other parties have gained over the past several years. The goal of such reevaluation shall be to ensure that the HRS actually assesses the relative risks to public health and the environment of potential Superfund sites. If appropriate, the model should be changed to better reflect the relative hazards posed by the Agency must evaluate.

The section establishes the right of any person to petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant. Within 12 months, the Administrator must complete such assessment or explain why such an assessment is not appropriate. If the preliminary assessment indicates that such releases may pose a threat to human health or the environment, the Administrator must evaluate the release for possible inclusion on the National Priorities List.

The section adds a new criteria to the current law to be used in determining priority facilities: the contamination or potential contamination of the ambient air which is associated with a release or threatened release. The Committee is concerned that the HRS does not reflect adequately the risk posed to human health by air emissions from abandoned waste sites.

Finally, the section deletes the requirement in current law that the National Priorities List contain no fewer than 400 sites and allows the states to place only one highest priority site on the National Priorities List. The deletion of the phrase "at least 400 facilities" would allow the Agency to select and place on the National Priorities List, only those facilities which present "the greatest danger to public health or welfare or the environment". The change relating to one highest priority site clarifies original intent that states be allowed only one highest priority site over the duration of the Superfund program. These provisions will allow the Administrator to effectively limit the NPL to only those facilities which pose significant problems to public health or the environment.

Section 106—Abatement actions

This section prohibits the Administrator from any action under Section 106 of CERCLA with respect to a release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act. The provision does not modify the obligations or liability or persons under other State or Federal laws. The provision does not limit in any way the authority of the Administrator to use the Fund to clean up problems associated with pesticides.

Section 107—Liability

This section addresses coverage of releases from foreign vessels, costs and interest recoverable, certain liability exemptions, establishment of trustees for natural resources, creation of a lien in favor of the United States and the standard of liability under CERCLA.

This section clarifies foreign vessels not othrwise under United States jurisdiction that release hazardous substances in areas subject to United States jurisdiction are subject to liability under section 107 of CERCLA.

The section clarifies that all costs incurred by the United States or the States in investigating releases or threatened releases, in conducting health assessments or other health-related studies, or in responding to releases between 1976 and 1980, shall be recoverable from responsible parties.

The section gives the Administrator authority to obtain prejudgment interest in all cost recovery actions.

The section further provides that the protections afforded under current law for rendering assistance in accordance with the National Contingency Plan shall apply to response costs, as well as damages to natural resources.

The section modifies the potential liability of Federal, State and local governments that respond to emergencies created by the release of a hazardous substance, pollutant or contaminant generated by or from a facility owned by another person. Federal, State or local governments shall not be liable for costs and damages as a result of non-negligent actions taken in response to such emergencies. This section removes a disincentive for governments to respond to emergencies covered by CERCLA. So long as a Federal, State or local government acts in a non-negligent way when undertaking an emergency action to abate a hazard under CERCLA, that government will not be subject to the same liability provisions applicable to the parties that created the hazard.

The section provides for the designation of Federal and State officials to act as trustees for natural resources and creates a rebuttable presumption that their assessment of damages to such resources are valid if the assessment is in accordance with the regulations promulgated under section 301(c) of CERCLA.

The section also establishes a lien in favor of the Federal Government upon real property subject to response actions belonging to persons liable for costs and damages under CERCLA.

No change has been made in the standard of liability that applies under CERCLA. As under section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321, liability under CERCLA is strict, that is, without regard to fault or willfulness. Where appropriate, liability under CERCLA is also joint and several, as a matter of federal common law.

Explicit mention of joint and several liability was deleted from CERCLA in 1980 to allow courts to establish the scope of liability through a case-by-case application of "traditional and evolving principles of common law" and pre-existing statutory law. See 126 Cong. Rec. H11787 (daily ed. Dec. 3, 1980) (statement by Rep. Florio); 126 Cong. Rec. S14967 (daily ed. Nov. 24, 1980) statement by Sen. Stafford). The courts have made substantial progress in doing so. The Committee fully subscribes to the reasoning of the court in the seminal case of *United States* v. *Chem-Dyne Corporation,* 572 F. Supp. 802 (S.D. Ohio 1983), which established a uniform federal rule allowing for joint and several liability in appropriate CERCLA cases. As that court held:

> A reading of the entire legislative history in context reveals that the scope of liability and term joint and several liability were deleted to avoid a mandatory legislative standard applicable in all situations which might produce inequitable results in some cases. (Citations omitted.) The deletion was not intended as a rejection of joint and several liability. (Citations omitted.) Rather, the term was omitted in order to have the scope of liability determined under common law principles, where a court performing a case by case evaluation of the complex factual scenarios associated with multiple-generator waste sites will assess the propriety of applying joint and several liability on an individual basis. (*U.S.* v. *Chem-Dyne,* supra, at 808.)
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> [W]hen two or more persons acting independently caused a distinct or single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he had himself caused. But where two or more persons cause a single and indivisible harm, each is subject to liability for the entire harm. Furthermore, where the conduct of two or more persons liable under [section] 9607 has combined to violate the statute, and one or more of the defendants seeks to limit his liability on the ground that the entire harm is capable of apportionment, the burden of proof as to apportionment is upon each defendant. 572 F. Supp. at 810 [citations omitted].

The Committee believes that this uniform federal rule on joint and several liability is correct and should be followed. It is unnecessary and would be undesirable for Congress to modity this uniform rule. Thus, nothing in this bill is intended to change the application of the uniform federal rule of joint and several liability enunciated by the *Chem-Dyne* court.

Section 108—Financial responsibility

This section clarifies certain aspects of existing financial responsibility requirements and provides for direct action against guarantors in appropriate cases.

Specifically, the section: (1) provides claimants in appropriate circumstances with the right of direct action against guarantors (defined as persons who provide evidence of financial responsibility to an owner or operator, (2) permits a guarantor when subject to a direct action suit to invoke as a defense the terms and conditions contained in the guarantor's policy of insurance with the owner or operator, (3) confirms, without diminishing any other statutory, contractual or common law liability of a guarantor, that the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to a particular owner or operator, and (4) authorizes the Administrator to establish appropriate rules and defenses with respect to such actions.

The section modifies an existing right of direct action against a guarantor. With direct action, a claimant may file a lawsuit naming an insurance company or other entity serving as guarantor as a defendant in the case. Absent the right of direct action, an injured party would file an action only against the person who allegedly had caused the injury, and it is that person's liability which is litigated in the action. The insurer's obligation is to its insured, with whom the insurer has a contract. If the insured is found liable, then the insurer is obligated to make payment to the insured in accordance with and subject to the terms of the contract.

In some instances, however, an injured party, who is the intended beneficiary of the financial responsibility requirements in CERCLA, may not be able to bring an action against the owner or operator to recover from that owner or operator or their guarantor. There are two specific circumstances where this may occur. First, it is possible that a claimant may not be able to obtain court jurisdiction over the owner or operator. Second, and perhaps more likely, the owner or operator either voluntarily or involuntarily may be a debtor in bankruptcy. These two circumstances include cases where an owner or operator may be identified and subject to court jurisdiction, but clearly unlikely to be solvent (i.e., capable of paying the judgment) at the time the litigation is resolved. The section would afford a claimant the right of direct action in both instances.

In a direct action lawsuit, the section permits the guarantor to invoke not only the defenses that would have been available to the owner or operator, i.e., acts of God, acts of war, unrelated third-party acts in limited circumstances, but also the terms and conditions that the insurer had agreed upon with the insured in their policy of insurance. By authorizing a guarantor to invoke these rights and defenses which form the basis of the insuring agreement, this section should not impede the development of a competitive marketplace for insurance certified as evidence of financial responsibility.

At the time of enactment of CERCLA, there was some concern that a guarantor might use its policy terms and conditions to diminish the risk it was undertaking, and therefore the value of the financial responsibility it had provided. The section authorizes the Environmental Protection Agency to specify policy or other contractual terms, conditions or defenses which EPA deems to be necessary or to be unacceptable in establishing evidence of financial responsibility.

The section also clarifies and defines more precisely the ultimate liability of a guarantor when providing evidence of financial responsibility. As written, present section 108(d) of CERCLA could be interpreted so as to expose an insurer to the full amount of the risk regardless of the insurer's policy limits should an insurer be found to have acted not in good faith. Section 108(d) does not define the term "good faith" nor does it specify to whom the guarantor must act in good faith. To cure this uncertainty, the section specifies that a guarantor's policy limits shall be binding, but that nothing in CERCLA is intended to limit any other statutory, contractual or common law liability of a guarantor, including any traditional common law obligation to act in good faith toward its insured.

Finally, the section makes explicit and uniform how evidence of financial responsibility is to be provided. First, the section requires that evidence of financial responsibility is to be provided in accordance with regulations promulgated by the Administrator of EPA. Thus, for example, the mere purchase of insurance by an owner or operator is not sufficient, in and of itself, to meet the financial responsibility provisions of CERCLA. Rather, in order to meet the requirements of the statute, an owner or operator must obtain from a guarantor insurance or some other form of financial guarantee that qualifies as evidence of financial responsibility pursuant to the EPA's regulations. Second, the section provides that evidence of financial responsibility may be provided by any one, or any combination, of the following: insurance, letter of credit, guarantee, surety bond or qualification as self-insurer.

Section 109—Penalties

The section raises the criminal penalties under Section 103 of current law for failing to file a notice of a reportable release to a fine in accordance with Section 3623 (or 3571 if applicable) of title 18 of the United States Code, or imprisonment for not more than three years, or both. It also establishes a civil penalty for such violations of not more than $25,000 for each day of continued noncompliance.

The section also raises the criminal penalty under Section 103 for destroying or falsifying required records to a fine in accordance with Section 3623 (or 3571 if applicable) of title 18 of the United States Code, or imprisonment for not more than three years, or both. It also establishes a civil penalty for such violations of not more than $25,000 for each day of continued noncompliance.

The section establishes a civil penalty under Section 104 of current law for any person who fails to comply with an information-gathering or access request to not more than $25,000 for each day of continued noncompliance.

The section raises the civil penalty under Section 106 of current law for noncompliance with an abatement order to not more than

$25,000 for each day in which such violation occurs or such failure to comply continues.

The section raises the civil penalty under Section 109 of current law for each day of violation of the law's financial responsibility requirements to not exceed $25,000.

This section amends section 109 as amended to provide that any person who knowingly submits false or misleading information in any notice required under Section 103 shall be subject to imprisonment for not more than three years, a fine in accordance with Section 3571 of title 18 of the United States Code (or Section 3623 of title 18 if applicable), or both. The section further amends Section 109 to provide that any person who submits any false or misleading information in any notice required under Section 103 shall be subject to a civil penalty of not more than $25,000 for each day during which such violation continues unless such information is corrected within 30 days after the date of submission.

This section requires that any civil penalty under this legislation or current law shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. It also provides that the Administrator, in a proceeding to assess any such penalty, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

Finally, the section raises the criminal penalty under Section 112 of current law for falsifying any claim filed under current law to a fine in accordance with Section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisonment for not more than three years, or both.

Section 110—Tax on certain imported substances as alternative to Federal share

This section suggests a tax on imported substances manufactured or produced from materials or feedstocks consisting of 1 or more taxable chemicals under Title II of CERCLA. The tax should raise $140,000,000 for each of the next five fiscal years and the revenues from the tax should be used to offset monies appropriated from general revenue for use as the Federal contribution to the Superfund.

Section 111—Uses of the fund

The section establishes a total fund level of $1,750,000,000 for each of 5 fiscal years commencing on October 1, 1985 and authorizes annual appropriations from the general revenues for Superfund of $250,000,000 for those same five years. The section requires that general revenue appropriations be reduced by the amounts determined by the Secretary of Treasury to be received under section 221(b)(1)(B).

This section also would amend current law to expand uses of the Fund to include the new authorities created by the legislation. These uses include authority to make grants to community groups for the purposes of evaluating remedial action plans (see section 116), to evaluate petitions to the Administrator requesting an assessment of a site which has released or threatens to release hazardous substances, pollutants or contaminants into the environment (see section 105), to oversee cleanups directed by responsible parties, and to allow payment for the new health-related functions of the Agency for Toxic Substances and Disease Registry established under section 115.

The section eliminates use of the Fund for payment of natural resource damage claims. The realization has grown over the past several years that the amount of money in the Fund may not be adequate to assure cleanup at all the potential Superfund sites. The Committee has decided that the primary purpose of the Fund should be the protection of human health. The Committee continues to require promulgation of regulations on natural resource damage claims to ensure that costs for such claims may be recovered from responsible parties. The resources in the Fund, however, should be reserved for protection of human health.

The section replaces the provisions in current law concerning audits by Inspectors General of the agencies charged with responsibility for implementing the Superfund program. The new provision requires annual audits and submission of an annual report to the Congress summarizing the audit's findings. Each such report must include: (1) an audit of all payments, obligations, reimbursements or other uses of the Hazardous Substance Response Trust Fund to assure that the fund is being properly administered; (2) a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year; and (3) an estimate of the amount of resources, including the numbers of work years or personnel, which will be necessary for the relevant agencies to fulfill their statutory mandates. Such reports shall also include an examination of (1) agreements between the Administrator and the states in carrying out response actions under the law and (2) remedial investigation and feasibility studies prepared for such response actions.

The Committee intends that the estimates of necessary resources and personnel which the Inspectors General are required to submit under the legislation shall reflect the independent judgment of Inspectors General concerning each Agency's staffing needs.

Finally, the section provides that no less than $30,000,000 a year, beginning in fiscal year 1986 shall be directly available to the Agency for Toxic Substances and Disease Registry to carry out the health authorities of the Act.

Section 112—Claims procedure

This amendment establishes a 6-year statue of limitations for the presentation of claims by private parties against the Fund for recovery of the costs referred to in Section 107(a). The statute of limitations begins to run when the response action has been completed. In the case of a minor, the statute of limitations does not begin to run until the minor reaches the age of eighteen years or has a legal representative appointed, whichever is earlier. In the case of an incompetent, the statute of limitations does not begin to run until the incompetency ends or a legal representative is appointed, whichever is earlier.

Section 113—Litigation, jurisdiction, and venue

This section clarifies and confirms that nationwide service of process is available under CERCLA. Although service of process has been implicitly available under CERCLA, this amendment makes the availability of such service explicit, to avoid future arguments on the issue and to expedite government enforcement actions.

This section establishes a three-year statute of limitations for the filing of an action for contribution for response costs or damages. The statute of limitations begins to run at the date of judgment for recovery of response costs or damages or the date of entry of a judicially approved settlement with respect to such costs or damages.

This section also establishes a three-year statute of limitations for the initiation of actions to recover claims for damages to natural resources and a six-year statute of limitations for the initiation of actions to recover costs under section 107(a).

This amendment establishes a 6-year statute of limitations for the presentation of claims by the government against responsible parties under Section 107(a). Such an action may be commenced at any time after such costs have been incurred and before the statute of limitations expires. The statute of limitations begins to run when the response action has been completed. In the case of a minor, the statute of limitations does not begin to run until the minor reaches the age of eighteen years or has a legal representative appointed, whichever is earlier. In the case of an incompetent, the statute of limitations does not begin to run until the incompetency ends or a legal representative is appointed, whichever is earlier.

CERCLA currently includes no explicit statute of limitations for the filing of cost recovery actions under section 107. This amendment provides for the timely filing of cost recovery actions, to assure that evidence concerning liability and response costs is fresh and to provide a measure of finality to affected responsible parties.

The section also confirms a Federal right of contribution or indeminification for persons alleged or held to be liable under section 106 or 107 of CERCLA and prohibits the assertion of such rights against a party who has entered into a judically approved settlement with EPA.

It has been held that, when joint and several liability is imposed under section 106 or 107 of the Act, a concomitant right of contribution exists under CERCLA, *United States* v. *Ward,* 8 Chem. & Rad. Waste Litig. Rep. 484, 487-88 (D. N.C. May 14, 1984). Other courts have recognized that a right to contribution exists without squarely addressing the issue. See, e.g., *United States* v. *South Carolina Recycling and Disposal, Inc.,* 7 Chem. & Rad. Waste Litig. Rep. 674,677 (D. S.C. February 23, 1984). This section clarifies and confirms the right of a person held jointly and severally liable under CERCLA to seek contribution from other potentially liable parties, when the person believes that it has assumed a share of the cleanup or cost that may be greater than its equitable share under the circumstances. This section does not affect the right of the United States to maintain a cause of action for cost recovery under Section 107 or injunctive relief under Section 106, whether or not the U.S. was an owner or operator of a facility or a generator of waste at the site. Where the United States has been required to pay response costs as a generator or facility owner or operator, the United States may maintain an action to recover such costs from other responsible parties.

The section should encourage private party settlements and cleanups. Parties who settle for all or part of a cleanup or its costs, or who pay judgments as a result of litigation, can attempt to recover some portion of their expenses and obligations in contribution litigation from parties who were not sued in the enforcement action or who were not parties to the settlement. Private parties may be more willing to assume the financial responsibility for some or all of the cleanup if they are assured that they can seek contribution from others.

In addition to encouraging settlement, the section will help bring an increased measure of finality to settlements. Responsible parties who have entered into a judicially approved good faith settlement under the Act will be protected from paying any additional response costs to other responsible parties in a contribution action.

The section contemplates that if an action under section 106 or 107 of the Act is under way, any related claims for contribution or indemnification may be brought in such an action. This provision should also encourage private party settlements and cleanup since the actuality of being brought into litigation as a third-party defendant, concurrent with the original litigation, has the effect of bringing all such responsible parties to the bargaining table at an early date. In addition, this provision will lessen any ill will that is created between the government and the original defendants selected by the government for naming in the original suit. This provision allows all counterclaims, cross-claims and third-party actions to be dealt with in a single action if the court is so inclined. District courts should carefully manage cases filed pursuant to this section to insure that the litigation is conducted in an expenditious manner and is not unduly delayed by the concurrent maintenance of third party actions. Among the tools available to the court for management are the exercise of strict judicial control over multiparty proceedings, designation of a representative defendant for service of papers, as well as use of the procedures set forth in the *Manual for Complex Litigation.*

As with joint and several liability issues, contribution claims will be resolved pursuant to Federal common law. Although the only defenses to liability remain those set forth in Section 107(b), courts are to resolve such claims on a case-by-case basis, taking into account relevant equitable considerations.

This section also amends sections 113 and 106 of current law to clarify the process for judicial review of government decisions concerning the appropriate extent of response and the liability of responsible parties. The section provides that:

(1) litigation seeking review of EPA response actions or section 106 administrative orders is postponed until after the response action is taken except when EPA is seeking injunctive relief under section 106 or a party is seeking review pursuant to a consent decree;

(2) judicial review of EPA response decisions is on the administrative record, however, when a citizen seeks to enforce the requirements of the Act, the citizen may introduce evidence to demonstrate that the requirements of the Act were met with regard to the implementation of the response action;

(3) EPA shall promulgate regulations establishing procedures for the participation of interested persons in the development of the administrative record;

(4) recipients of section 106 orders are not liable for noncompliance penalties if they have "sufficient cause" for noncompliance; and

(5) parties who receive section 106 orders may be reimbursed for the costs they incur once response action is completed if a court finds that they are not liable or that the costs were not proper under the NCP.

Preenforcement review.—Response actions or consent orders under section 104 and orders under section 106 may be subject to judicial review at the time the government seeks cost recovery or acts to enforce an order or otherwise obtain injunctive relief. Review may also occur pursuant to the terms of a consent decree, through a citizen suit alleging that the response action that had been taken was in violation of the requirements of the Act, or through a reimbursement suit by a potentially responsible party under the new procedures provided in this section. The section is intended to codify the current position of the Administrator and the Department of Justice with respect to preenforcement review: there is no right of judicial review of the Administrator's selection and implementation of response actions until after the response action have been completed to their completion.

Record review.—This amendment establishes that judicial review of the response action is limited to the administrative record. Reliance on an administrative record helps assure that the basis for the response decision is clearly articulated and open to scrutiny by the public and responsible parties. It also encourages full responsible party and public participation in development of the record before the remedy is selected. Moreover, limiting judicial review of response actions to the administrative record expedites the process of review, avoids the need for time-consuming and burdensome discovery, reduces litigation costs, and ensures that the reviewing court's attention is focused on the and criteria used in selecting the response.

When a citizen suit concerning the response action taken is brought, if the suit alleges that the implementation of the response action (rather than its selection) was not in accordance with the requirements of the Act, the citizen may introduce evidence on this point because such evidence could not have been included in the administrative record.

The amendment provides that the court should uphold the Administrator's choice of response action unless the objecting party establishes, on the basis of the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law. The Committee intends courts to undertake a searching and careful review of government response decisions in accordance with existing administrative law principles. The Committee emphasizes that issues of liability, as opposed to remedy, will never be limited to the administrative record, but will be open to the introduction of evidence by all parties.

Regulations for public participation.—Because judicial review will be on the administrative record, there is a need to ensure a uniform process for the participation of potentially reasonable parties and the public in the development of the administrative record underlying the selection of remedy. Accordingly, the amendment mandates the promulgation or regulations establishing a procedure for such participation in the development of the administrative record.

The amendment sets forth five procedural protections that apply to remedial actions. These public participation requirements apply to remedial actions and are not intended to hamper emergency removal actions. Nonetheless, the Administrator is directed to develop appropriate participation procedures for removal actions and should follow these requirements to the maximum extent practicable. To ensure that enforcement and cost recovery actions will not be delayed during the interim period while these regulations are being developed and implemented, judicial review during this period should continue to be on the administrative record that has been assembled. Existing administrative law principles will govern whether supplementary materials explaining or clarifying the record may be introduced at trial.

"Sufficient cause" defense to penalties.—The phrase "without sufficient cause" is currently set forth as a defense to liability for treble damages in section 107(c)(3) of CERCLA. The government has argued and the courts have interpreted this phrase to mean that a party will not be liable for treble damages for failing to comply with an EPA order when the party has a reasonable good faith belief that it has a valid defense to that order. See *Wagner Electric Corp* v. *Thomas,* No. 85-2212-0 (D. Kan. June 20, 1985); *United States* v. *Reilly Tar & Chemical Corp,* 606 F. Supp. 412, 421 (D. Minn. 1985).

To avoid potential unfairness that might arise from the limitation on the timing of review of section 106 orders, this amendment expressly extends the "sufficient cause" defense to the penalty provision in section 106. The amendment contemplates that the phrase "sufficient cause" will continue to be interpreted to preclude the assessment of penalties or treble damages when a party can establish that it had a reasonable belief that it was not liable under CERCLA or that the required response action was inconsistent with the national contingency plan. The court must base its evaluation of the defendant's belief on the objective evidence of the reasonableness and good faith of that belief. Given the importance of EPA orders to the success of the CERCLA program, courts should carefully scrutinize assertions of "sufficient cause" and accept such a defense only where a party can demonstrate by objective evidence the reasonableness and good faith of a challenge to an EPA order.

The amendment also contemplates that courts will continue to interpret "sufficient cause" to encompass other situations where the equities require that no penalties or treble damages be assessed.

Review of orders and reimbursement of costs and damaged.—The changes relating to judicial review clarify, confirm, and make uniform the existing process. The amendment also establishes new procedures for reimbursement of costs and provides opportunities for judicial review of administrative orders once the response action required by the order is completed.

Under the amendment, potentially responsible parties can request reimbursement from the Fund for costs incurred in responding to an order. If the Administrator refuses to grant all or part of a petition for reimbursement, such parties may file an action in district court seeking reimbursement. Potentially responsible parties may obtain reimbursement, plus interest, if they can show:

—that they are not liable under the Act, and that the costs which they incurred in responding to the order were reasonable; or

—that response action ordered by the President was arbitrary and capricious or otherwise not in accordance with the law.

The amendment emphasizes that in addition to reimbursement, such parties may recover attorneys' fees and costs in accordance with the Equal Access to Justice Act, which was reauthorized by this Congress. The amendment also provides that persons who establish that they are not respnsible parties under section 107(a) of CERCLA may recover compensatory damages against the United States. This recovery of damages resulting from the issuance of a section 106 order to a nonliable person is not a tort action and is not based on or subject to the provisions of the Federal Tort Claims Act. Rather, it is a specific independent waiver of sovereign immunity for nonliable recipients of section 106 orders so that they may recover the special damages that may directly result from compliance with the cleanup order. Courts should apply traditional rules of foreseeability, causation, and certainty in determining the extent of any recovery of damages under this provision. Reimbursement of attorneys' fees and costs under the EAJA and of compensatory damages under subparagraph (E) shall not be paid from the Fund. Attorneys fees and costs shall be paid as provided in the Equal Access to Justice Act and compensation for damages shall be paid as all other judgements against the United States.

This provision will foster compliance with orders and promote expeditious cleanup, by allowing potentially responsible parties who agree to undertake cleanup to preserve their arguments concerning liability and the appropriateness of the response action.

Section 114—Relationship to other law

The section would repeal the present provisions of section 114(c) f CERCLA which preempts state taxing authority in certain circumstances and substitutes a new provision authorizing a state to require contribution to a fund whose purpose is to pay for costs of response or damage.

The Committee is aware that the current law's preemption of state taxing authority has been interpreted by some to constitute a total elimination of state authority in this area. The Committee believes that the proper interpretation of current law is that its preemption provision was intended only to preclude states from imposing taxes or otherwise requiring contributions to funds which would pay costs or damages that would be actually compensated by Superfund. To avoid any possible misinterpretation of the law which could further restrict the states' efforts to raise the funds necessary to meet their matching share obligations under the program, the legislaition repeals the current law's preemption provision in its entirety and provides a new provision consistent with the Committee's belief.

Section 115—Public health assessment and protection authorities

This section would require that, within 6 months of the date of enactment of the legislation, the Administrator of EPA in consultation with the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR), must prepare a list of at least 100 hazardous substances, pollutants and contaminants which the ATSDR Administrator determines pose the greatest risk to human health because of their known or suspected toxicity and the potential for human exposure at the National Priorities List sites under CERCLA. Within 24 months of the date of enactment, the EPA Administrator in consultation with the Administrator of ATSDR must review the list and add an additional 100 substances, which are likely to be found at such National Priorities List sites or facilities, to the list.

Within four years of enactment, the ATSDR Administrator must prepare toxicological profiles of the first 100 listed substances, at the rate of 25 per year, and must prepare toxicological profiles of the second 100 substances at the rate annually in subsequent years. The toxicological profiles must be prepare in accordance with guidelines developed jointly by the Administrator of EPA and the Administrator of ATSDR. The toxicological profiles must be based on information already available to the Administrator, but it is not intended that the Administrator use only information which is already available; he or she is given explicit authority to initiate additional research when necessary. The Committee intends that the Administrators of ATSDR and EPA coordinate such research with existing research programs in other agencies to avoid duplication.

The section further provides that the ATSDR Administrator shall perform a health assessment for each National Priorities List site which meets three criteria based on EPA information: 1) the presence of a hazardous substance, pollutant, or contaminant has been confirmed at the site; 2) pathways of human exposure to such substances have been demonstrated at the facility; and 3) a significant threat of current or future adverse health effects may exist at the facility. These three criteria are intended to serve as an indication of where the ATSDR Administrator must conduct a health assessment; they are not intended to limit EPA or ATSDR's discretion to carry out health assessments at any other facility or site subject to CERCLA. The Committee intends that health effects studies shall be performed in all cases where it is possible that the exposure to hazardous substances, pollutants or contaminants from such facilities may present a significant risk to human health, whether or not the site or facility has been evaluated to determine whether it meets all three criteria or whether it is listed on the NPL. The Administrator or ATSDR and the Administrator of EPS coordinate the performance of health assessments under this section.

The section also would allow persons affected by exposure to hazardous substances, pollutants or contaminants to petition the EPA Administrator to perform a health assessment (the EPA Administrator may then delegate this authority to ATSDR). The EPA Administrator must initiate a health assessment within 45 days after receiving the petition or, also within 45 days, take one of several other actions:

—Publish a written determination that there is not a reasonable likelihood that the hazardous substance, pollutant or contaminant was released from a Superfund-related facility.

—Publish a written determination that there is not a reasonable likelihood that the exposure from such facility presents a significant risk to human health.

—Publish a written determination that evidence submitted in the petition or otherwise available to the Administrator is not adequate to determine whether there is a reasonable likelihood that there was a release from such a facility or that there is a reasonable likelihood that the exposure presents a significant risk to human health;

—Respond in writing to the petition by setting out a schedule for review of the petition or a schedule for initiating the health assessment.

If the Administrator finds that evidence presented in the petition is not adequate, he or she must, in the written explanation, identify what additional information is necessary to complete the petition in order to allow the Administrator to make the required determinations. All studies initiated in response to a petition must be completed within six months.

The section is not intended to preclude negotiated agreements between the Administrator and the petitioner to extend the six-month deadline for completion of a study when additional information is needed. However, any extension of the deadline must be agreed to by the petitioner.

The Committee intends that assessments be conducted when there is a reasonable likelihood that the effects of an exposure from a CERCLA type facility may present a significant risk to human health. However, the burden of demonstrating exposure in the first instance remains on the petitioner, in the case of a health assessment performed because of a citizen petition. The Committee intends that such positions should contain evidence that such petitioner is being exposed to a hazardous substance and an empirical analysis of the level of exposure. For example, citizens may submit a laboratory test of contaminated drinking water demonstrating the concentration of hazardous substances in such water, and attest to the fact that the tested water is their primary drinking water supply. A petition which merely asserts that the drinking water at issue tastes or smells unusual would not meet the initial burden intended by the legislation.

At the same time, the Committee does not intend to impose on the petitioner the burden of demonstrating the full scope and magnitude of continued exposure. Petitioners should not be required, for example, to submit a sequence of tests designed to illustrate for how long and at what levels they have been exposed to a hazardous substance or substances in the past. Ascertaining the full nature, scope and magnitude of the exposure is one of the primary purposes of the health assessments and other studies required under this section. Neither is the Administrator of EPA or ATSDR intended to be limited to the information presented within the four corners of the petition in making the decision whether to initiate a health assessment; if evidence submitted in the petition is an inadequate basis upon which to make such a decision, the Administrator shall make use of any related information available to him from other sources, such as toxicological profiles or site-specific data about the release of facility in question. If the petition fails to include evidence of human exposure and an empirical analysis of the exposure, the Administrator shall notify the petitioner of the inadequacy of the petition. The Administrator shall identify the specific deficiencies of the petition and shall allow the petitioner to re-submit an amended petition.

Finally, the Committee recognizes it may not be possible to determine with certainty whether the source of contamination was from a facility where hazardous substances, pollutants or contaminants were regularly "treated, stored, or disposed" or from a facility whether the Administrator has taken a removal action. The legislation therefore applies a "reasonable likelihood" standard which is intended to allow the Administrator to formulate a reasonable judgment concerning the derivation of the contamination on the basis of the facts available. As for the determination whether such facility was one where hazardous substances were regularly "treated, stored, or disposed," the Committee intends this language to identify locations where hazardous substances have been left on more than isolated occasions and have accumulated in a manner which may present a risk to death.

The section defines "health assessment" as a determination of the potential individual and population human health risks posed by individual facilities, to be based on (but not limited to), information on: 1) the nature and extent of the contamination; 2) the existence, scope and magnitude of the potential pathways of human expsoure; 3) the size and potential suseptibility of communities within the likely pathways of exposure; 4) comparison of human exposure levels from releases of hazardous substances; pollutants or contaminants from the facility; and 5) comparison of existing morbidity and mortality data. These elements are not intended to be an exclusive list and the Administrator of EPA or the ATSDR should explore additional areas and gather other information where appropriate. The Committee intends that the two agencies retain maximum flexibility and discretion to go beyond the basic elements required by the legislation in developing useful and complete health assessment studies.

The section would also require that, to the maximum extent practicable, health assessments should be completed at NPL facilities prior to the completion of the Remedial Investigation/Feasbility Study (RI/FS). This provision is not intended, however, to in any way delay completion of the RI/FS or commencement of remedial action. When health assessments are performed by the ATSDR Administrator, the section requires that he or she provide the EPA

Administrator with the results of each assessment, together with any recommendations concerning the need to further reduce exposure.

Where the Administrator of ATSDR deems it necessary based on the findings of a health assessment, the section gives him or her the authority to conduct pilot and full scale epidemological studies of health effects for selected groups of individuals; to establish a disease registry for such populations; and to establish a health surveillance program for populations at significant risk. In case of public health emergencies caused by releases of hazardous substances, pollutants or contaminants, the Administrator of ATSDR is instructed to provide medical care and, where appropriate, medical testing to exposed individuals.

The section further provides that upon completion of a health assessment or other study or evaluation carried out under this Act in relation to facilities or sites subject to this Act, the Administrator of EPA shall determine whether the exposure at issue presents a significant risk to human health. The section requires that whenever such finding is made, the Administrator must take steps necessary to abate such risk. Such steps may include, but shall not be limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. The Committee intends that the Administrator retain maximum flexibility to take whatever action may be necessary to abate a significant risk associated with facilities or sites under this Act as quickly as possible.

This provision is not intended to delay or otherwise affect or impair any other authority granted to the Administrator under CERCLA or any other provision of law applicable to such facilities or sites. CERCLA grants authority for the Administrator to take emergency action to protect human health, including relocation of affected individuals or provision of alternative drinking water supplies. The Committee intends that the Administrator shall retain full authority under current law to provide such emergency relief, even in the absence of completed health assessments or other studies when preliminary information indicates that exposed populations are at risk.

Finally, the section provides that studies conducted under this section, other than health assessments, shall be subject to appropriate peer review and instructs the ATSDR to prepare and disseminate educational materials to medical personnel. The section would permit the ATSDR Administrator to delegate his authorities under the legislation to states capable of performing them. It also provides that the ATSDR Administrator shall have the same authorities with respect to federal facilities as he or she has with respect to private facilities.

The Committee recognizes that our science base is inadequate for the development of long-term solutions to many hazardous waste site cleanup problems. This section of the legislation takes into account suggested approaches contained in the report "Superfund Strategy," prepared by the Office of Technology Assessment (OTA) at the Committee's request. This section provides a balanced, comprehensive research and training program designed to meet health problems associated with hazardous waste site cleanup activities.

The OTA report identifies major research and manpower training needs which must be met if the science base for improved site cleanup and related health concerns is to be sufficiently strengthened.

Responding to these major concerns and problems, the section authorizes the Secretary of Health and Human Services (HHS), in consultation with the Administrator of the Environmental Protection Agency (EPA), to initiate a variety of relevant health research and training activities. They would be carried out through the National Institute of Environmental Health Sciences (NIEHS) under the peer review procedures applicable to grants and contracts under Title IV of the Public Health Service Act. These activities would be implemented through grants, cooperative agreements, and contracts with accredited institutions of higher education, which, in turn, may utilize collaborative arrangements with industry, or with State and local governments. The Committee intends to provide new research and training authorities to develop the science base necessary for shaping long-term solutions, rather than to simply expand existing CERCLA authorities which are focused primarily on case-by-case hazardous waste problems.

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The section provides that such research activities will include support for advanced techniques for detection, assessment, and evaluation of the health effects of hazardous substances; methods and technologies to assess human health risks presented by hazardous substances and to reduce toxicity of hazardous substances; site specific demonstration of innovative technologies involving hazardous substances response which may be conducted at National Priorities List Sites; and improved safety practices in, and equipment for the handling and disposal of hazardous substances. Research activities described in this section should be focused on the reduction of threats to human health and the environment and not on the improvement of industrial processes.

Authorized training activities include support for the training of personnel involved in the handling of hazardous substances and of state and local public health and environmental agency personnel.

The section also provides advanced or graduate training authority to carry forward the authorized research efforts, including such areas as environmental and occupational health, chemical engineering, molecular biology, ecology, and related research disciplines.

The section requires that in carrying out this research and training activity, the director of NIEHS cooperate fully with other participating agencies. It is the Committee's intention that such coordination by NIEHS in the planning and implementation of these activities include the Agency for Toxic Substances and Disease Registry (ATSDR); the National Institute for Occupational Safety and Health (NIOSH) and the Center for Environmental Health (CEH) at the Centers for Disease Control (CDC); the Environmental Protection Agency (EPA) and its relevant components; and the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services.

In order to strengthen the cooperation in hazardous substance response among relevant Federal agencies, industry, academia, state and local governments, and environmental groups, the Committee directs that the Secretary of Health and Human Services appoint an Advisory Council. Such Council would be chaired by EPA's Assistant Administrator for Research and Development. The Council will assist in the implementation of this subsection, including review and coordination of the research and training plan and priorities for action to be prepared by NIEHS. The Committee intends that the director of NIEHS serve as executive secretary of the Advisory Council.

The section requires that within one year after enactment, the Secretary of HHS shall issue a plan to implement the research and training authorities established in the legislation. This plan will include priorities for actions, including those relevant scientific and technological issues resulting from hazardous substance response experience. Also to be included in the plan is consideration of development and evaluation of cleanup technologies. The plan shall be subject to review and formal comment by the Advisory Council.

The costs of carrying out the research and training program established by this subsection (from Trust Fund monies) will not exceed $3 million for Fiscal Year 1986; $10 million for Fiscal Year 1987; $25 million for Fiscal Year 1988; $35 million for Fiscal Year 1989; and $40 million for Fiscal Year 1990.

Section 116—Public participation

The Committee is of the strong opinion that communities affected by Superfund sites will demonstrate much stronger support for actions necessary to clean up those sites if the community is involved from the beginning in determining the actions which will be necessary to complete the cleanup.

The section requires the Administrator to provide a reasonable opportunity for public comment on any proposed plan for remedial action before such plan is made final, including holding a public meeting and keeping a transcript of the proceedings. The Administrator is also required to publish an explanation of his reasons if he or she rejects significant aspects of such comments upon adopting a final plan. The section further provides that if any response action is taken pursuant to a court order or consent decree which differs in significant respects from the final remedial plan adopted by the

Administrator, he or she shall publish an explanation of such differences. The section defines publication as including, at a minimum, publication in a major local newspaper of general circulation.

The provision is not intended to be unreasonably burdensome for the Administrator. Published information must be adequate to inform the community of the proposed remedial action but the Committee does not intend that the Administrator must publish in local publications every shred of evidence or communication which is available. It is the intent of the Committee, however, that all information be made available to the community, and the public meeting be held, in a convenient, central location so that individuals who choose to pursue a full understanding of the proposed remedial plan and its alternatives may do so.

Under this section, the Committee also gives the Administrator authority to make technical assistance grants to communities. Such grants are limited to one for each facility listed on the National Priorities List, and the group seeking the grant must provide one-fifth of the funds necessary for the grant project, unless the Administrator waives this matching requirement on the basis of the requesting groups's financial need. The amount of the grant is limited to $25,000, except that the Administrator may allocate more funds where he or she determines a higher amount is necessary to carry out the purposes of this section.

The Committee believes such grants could play a significant role in reducing the level of distrust among communities, responsible parties and the governmental agency taking the lead in cleanup. The intent of the provision is to allow communities affected by Superfund facilities on the National Priorities List to hire a competent scientific or other expert consultants to review and assess data and information which has been prepared by the EPA Administrator with respect to the facility. Such grants are not intended to be used to underwrite legal actions regarding the facility. In cases where more than one group from around a facility requests a technical assistance grant, the Administrator should require those groups to consolidate their request before making the grant.

Section 117—General provisions relating to response under title I

The section states that the Administrator shall not undertake a response action in response to certain types of releases or threatened releases unless he determines, in his discretion, that the release or threatened release constitutes a public health or environmental emergency and no other person is available to provide a timely response action. Circumstances covered under this provision include releases or threatened releases: (1) of a naturally occurring substance; (2) from products which are part of the structure of a building; (3) into public or private drinking water supply systems due to deterioration of the system through ordinary use; and (4) resulting exclusively from a coal mining site at which response action is available under the Surface Mining Control and Reclamation Act of 1977.

The Committee confirms the Administrator's existing authority under current law, as ratified in *Eagle-Pitcher Industries Inc.* v. *United States Environmental Protection Agency,* D.C. CIR. No. 83-

2259, (slip op. April 16, 1985) to use the full response, abatement and liability authorities of current law to address releases or threatened releases at mining waste sites. Further, the Administrator retains the authority to use the response authorities of Section 104 with respect to any release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

The section would require that when the Administrator establishes priorities for the purposes of taking response actions, he shall give high priority to facilities where the release of hazardous substances, pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source.

Finally, the section would require the Administrator to consider certain factors in adopting an offsite remedy including the long-term uncertainties of land disposal; the goals of the Solid Waste Disposal Act; toxic effects of the substances at issue; the potential for adverse health effects from exposure; the long-term maintenance costs; and the risks from excavation, transportation and disposal.

Section 118—Response action contractors

This section clarifies and differentiates the liability of response-action contractors hired by EPA, other Federal agencies, the States or persons undertaking cleanup of their own sites from the liability of responsible parties for Superfund-related activities. Response-action contractors currently face two distinct liabilities—liability for future cleanup costs under the present Superfund law and third-party liability under the various State laws.

Under the current Superfund law, response-action contractors, despite the exercise of due care and satisfactory performance of contract specifications, could, by virtue of their involvement with hazardous waste sites, be included in the definitions of owner, generator or transporter and therefore could be subject to liability under Superfund.

Liability for third-party damages under State law adds additional risks which continue years after contract completion, potentially exceeding both the contract amount and the company's net worth. Of particular concern is the potential application of strict or absolute liability—that is, liability without regard to fault or willfulness—for these damages.

The section exempts response-act contractors from liability under section 106 or 107 or CERCLA, or any other provision of Federal or State law, for all costs, damages or any other claims arising out of a release unless the contractor's negligent, reckless or willful misconduct caused the release. The protections of this section extend to any persons retained or hired by the response-action contractor to provide services relating to the response action under CERCLA.

The section limits the coverage of this exemption from certain liability provisions only to response-action contractors who would not otherwise be liable under CERCLA if they had not entered into a contract or agreement to perform a response action.

This section also overrides the small business set aside provisions of current Federal procurement regulation, thereby making the personnel of all relevant firms available for government cleanup contracts, and related services, under CERCLA.

In addition, this section explicitly makes the provisions of Title IX of the Federal Property and Administrative Services Act of 1949 (including, but not limited to, Public Law 92-582, known as the Brooks Act) applicable to the selection of Architect Engineering (A-E) firms to perform work pursuant to CERCLA. The Brooks Act provides, among other things, that selection of A-E contracts are on the basis of qualification and not price alone. This is done so as to assure the A-E's are under no need to compromise the quality of the design or the level of effort they will contribute to it in order to meet the lower"fee" quotations of other A-Es. They are free to suggest optimum design approaches that may cost more to design, but which will save in construction costs and otherwise increase the quality of the response action to be taken.

Section 119—Federal facilities

This section requires that each department, agency, and instrumentality of the United States shall be subject to, and comply with, this legislation and the current law, in the same manner and to the same extent, both procedurally and substantively as any nongovernmental entity, including liability under Section 107. It also provides that all guidelines, rules, regulations, procedures and criteria applicable to preliminary assessments, to evaluations pursuant to the National Contingency Plan, to inclusion on the National Priorities List, and to remedial actions at facilities where hazardous substances are located shall also be applicable to facilities which are owned or operated by a department, agency or instrumentality of the United States.

However, these provisions do not apply to requirements relating to [financial responsibility] or to the extend otherwise provided in this section with respect to applicable time periods.

This section requires the administrator to establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency or instrumentality of the United States. The Docket is required to contain information submitted by the department, agency, or instrumentality under Section 3005 or 3010 of the Solid Waste Disposal Act and the inventory required by Section 3016 of that Act including information on off-site contamination and a description of monitoring data. The section further states that information regarding releases of reportable quantities of hazardous substances pursuant to Section 103 must be submitted by the department, agency, or instrumentality.

The section directs the Administrator to make the Docket available for public inspection at reasonable times and to establish a program to provide information to the public with respect to the facilities listed in the Docket.

The section also states that six months after establishment of the docket and every six months thereafter, the Administrator must publish in the Federal Register a list of federal facilities which have been included in the Docket during the immediately preceding six-month period.

Where the Administrator determines that an evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator, not later than January 31, 1987, is required to evaluate each facility included in the Docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusions on the National Priorities List. The section further provides that the Administrator must make a hazard ranking system evaluation of any facility included in the Docket upon receiving a petition from the Governor of any state. The section also directs that within twelve months after completion of the evaluation of any facility, the Administrator must include the facility on the National Priorities List (NPL) if the facility meets the criteria for inclusion on the list.

Within six months after any facility is included in the National Priorities List, the department, agency, or instrumentality which owns or operates such facility must, in consultation with the Administrator, commence a remedial investigation and feasibility study (RIFS) for the facility. The section further states that in the case of any facility which is listed on the NPL before the date of enactment of this legislation, the department, agency, or instrumentality which owns or operates the facility, must, in consultation with the Administrator, commence a RIFS for the facility within one year after the date of enactment.

The section provides that the Administrator shall review the results of the RIFS, and within 180 days, shall enter into an interagency agreement with the head of the department, agency, or instrumentality concerned for the expeditious completion by such department, agency or instrumentality of all necessary remedial action at the facility.

The section further requires that the interagency agreement must include, but not be limited to, the following: (1) a review of alternative remedial actions and selection of a remedial action plan, including construction design, by the Administrator; (2) a schedule for the completion of each such remedial action; and (3) arrangements for long-term operation and maintenance.

The section makes clear that the proposal of a plan for remedial action in an interagency agreement and the adoption of such an agreement shall trigger the public participation requirements of Section 117.

The Committee intends that the public participation requirements of this legislation apply fully to any proposed or final plan for remedial action at a federal facility. Further, the section states that the concurrence of the state in which the facility is located is required for the selection of the remedial action to be carried out at the facility.

It further provides that the Administrator may grant a state's request to perform the role of on-scene coordinator for federal facility projects within its boundaries and the agency who owns or operates the facility shall pay the necessary and reasonable expenses.

The section also mandates that substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the RIFS. The section also states that each department, agency or instrumentality shall request adequate funding in the President's annual budget submittal to Congress to insure completion of the remedial action as promptly as practicable.

The section also requires each department, agency, or instrumentality to provide an annual report to the Congress describing its progress in implementing the requirements of this section. The annual report shall include as a minimum the following: (1) a report on the progress in reaching interagency agreements, in conducting RIFS, and in conducting remedial action and (2) the specific cost estimates and budgetary proposals involved in each interagency agreement.

The Committee recognizes that there have been significant problems caused by hazardous substance releases at many federal facilities such as Tinker Air Force Base, Oklahoma; Rocky Mountain Arsenal, Colorado; the Feed Materials Production Center, Fernald, Ohio; and Air Force Plant #44, Tucson International Airport, Arizona. Legitimate concerns have also been raised about adequate and timely response action at such facilities. The section provides the public, states, and the Environmental Protection Agency increased authority and a greater role in assuring the problems of hazardous substance releases at federal facilities are dealt with by expeditious and appropriate response actions.

Current law requires that each department, agency or instrumentality of the Federal Government is subject to and must comply with CERCLA, both procedurally and substantively as any non-governmental entity, including liability under section 107. Nothing in this section affects or impairs the Administrator's authority under current law to bring enforcement actions, including administrative orders and civil complaints under section 106, against federal facilities.

The section also explicitly provides that state laws concerning removal and remedial actions, including state laws regarding enforcement, shall apply to removal and remedial action at federal facilities even though such facilities are not included on the National Priorities List.

The section sets forth notification requirements which apply whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was disposed of or stored for one year or more.

Finally, the section makes clear that none of its requirements affect or impair the responsibility of any department, agency, or instrumentality to comply with all requirements of the Solid Waste Disposal Act, including its corrective action requirements under 40 CFR Part 264 and Sections 3008(h) and 3004(u) of the Act.

Section 120—Cleanup standards

This section requires the Administrator to select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. These actions shall be in accordance with the National Contingency Plan and shall be in accordance with the requirements of this section.

This section requires that any remedial action selected under section 104 or secured under section 106 for a facility at which a release or threatened release occurs shall require that level or standard of control of each hazardous substance or pollutant or contaminant at that facility which is necessary to protect human health and environment.

In selecting a remedial action under section 104 or to be secured under section 106, this section further requires the Administrator to evaluate alternatives which protect public health and the environment and to assess the cost-effectiveness of such alternatives. In making such assessment, the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account:

—the long-term uncertainties associated with land disposal;
—the goals, objectives, and requirements of the Solid Waste Disposal Act;
—the persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;
—the potential threat to human health and the environment associated with excavation, transportation, and redisposal;
—short- and long-term potential for adverse health effects from human exposure;
—long-term maintenance costs.

Following an evaluation under this subsection, this provision requires the Administrator to select that cost-effective remedial action which, to the maximum extent practicable, utilizes such permanent solutions and alternative treatment technologies or resource recovery technologies.

In relation to substances left on site, this section states that if any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act is applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or section 106 shall require a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such standard. In requiring a level or standard of control for such hazardous substance or pollutant or contaminant the Administrator shall consider any water quality criteria under the Federal Water Pollution Control Act which is applicable to that hazardous substance or pollutant or contaminant.

In using the word "applicable," the Committee means that the environmental statutes referenced in this section would apply legally to the situation presented by a release or threatened release of a hazardous substance, pollutant or contaminant. In using the word "relevant," the committee means that there may be circumstances related to a release or threatened release of hazardous substances, pollutants or contaminants where another environmental statute may not apply in a strict legal sense but where the circumstances are very similar to those anticipated by the law. The Committee intends that these relevant standards would be used when appropriate.

This section states that the level or standard of control required in accordance with the above standard shall be required only with regard to remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources. The Committee intends that the remedial action shall not require a level of control which exceeds the background levels of the hazardous substance, pollutant or contaminant which would have existed without the release.

In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, this section requires that such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act. Under this provision, all units of the land disposal facility must be in actual physical compliance with the standards and requirements of Sections 3004 and 3005 at the time the hazardous substances or pollutants or contaminants are being received by the facility. This does not preclude the continued operation of an incinerator at such a facility if the incinerator is in actual compliance with the Solid Waste Disposal Act. However, any residue from that incinerator can only be transferred to a land disposal facility where all units are in actual physical compliance.

In addition, this subsection requires the Administrator to make a finding that the land disposal facility is not releasing hazardous waste or constituents into the groundwater or that any such release is being controlled by corrective action approved by the Administrator under subtitle C of the Solid Waste Disposal Act. Control of any such release envisions the ultimate treatment or removal of hazardous waste constituents at levels in violation of the groundwater protection standard, as currently required under 40 CFR Part 264. Hazardous constituents means the full range of constituents covered by Appendix 8 to 40 CFR Part 261.

The Committee intends that corrective action shall be accomplished through final permits or Section 3008(h) orders at interim status facilities and the same standards would apply under either approach. Nothing in this subsection limits or prevents the Environmental Protection Agency from using any of its statutory authorities, including Sections 3004(u) or 3008(h) of the Solid Waste Disposal Act, to address releases to air, surface water, groundwater or soils.

This section allows the Administrator to waive the requirement of a standard with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings:

—The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment and is substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements;

—The Administrator finds that compliance with the requirements of the standard at that facility will result in greater risk to human health or the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible;

—The Administrator finds that compliance with such requirements is technically impracticable from an engineering perspective;

—The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements;

—The Administrator finds that the response action is an interim measure prior to final remedial action at the facility.

The Committee intends that a finding under this subsection may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

The overriding mandate of this section is that, regardless of cost, cleanup at each and every site must protect human health and the environment. Under no circumstances can this bedrock requirement be waived.

The section is intended to incorporate the National Contingency Plan. The Administrator's decision on the applicability of the control requirements established under other environmental statutes is to be made in accordance with the NCP. The determination of the applicability is not to be made solely with reference to the existence of a particular hazardous substance or pollutant or contaminent at a site and the existence of control requirements under those statutes but also with reference to the factors that would cause the requirements to come into play under those statutes.

Thus, for example, the section is not intended to trigger rigid imposition of standards that would govern contamination levels in tap water if the water is or would not be used for the purposes that the Safe Drinking Waster was enacted to safeguard. For the Administrator to determine control levels at sites without reference to how standards under other environmental laws come into play could lead to absured and costly results that could drain the Fund and jeopardize the national cleanup effort without achieving any additional meaningful protection of human health and the environment. That is not how the NCP currently operates and that is not the intent of this section.

This section states that no permit shall be required under Federal law for any response action undertaken by any person under section 104 or 106 at any facility to the extent that such action does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

In addition, this section provides that no permit shall be required under State or local law for any response action undertaken under section 104 or 106 at the facility at which the release or threatened release occurred. In selecting a response action under this Act for such release or threatened release, the Administrator shall consider any more stringent State standards relating to the level or standard for control for the hazardous substance or pollutant or contaminant concerned and any State law regarding the siting of facilities used at the site of such response action. If the Administrator selects a response action which is not consistent with a more stringent State standard, this section requires the Administrator to publish an explanation of the reasons for such decision. Following such publication, if the State determines that a more stringent State standard should be applicable to the response action and enter into an agreement with the Administrator to pay the additional costs attributable to compliance with the more stringent standard, the Administrator shall in accordance with this section require the response action to conform to the more stringent State standard. The Administrator shall determine the amount of any additional costs which are attributable to compliance with the more stringent State standard in lieu of the standard which the Administrator would otherwise select. This section states that if any State pays any additional costs of complying with a State standard or requirement, the State may recover such costs from responsible parties.

This section further states that no provision in this section shall affect any requirement of Federal, State, or local law to the extent such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility;

In addition, the section states that no provision in this section shall apply to any action undertaken pursuant to this Act at a facility which is owned or operated by a department, agency, or instrumentality of the United States. Also, the section is clear in stating that nothing in this Act shall preempt or otherwise affect the application of any Federal, State, or local law, including any permit requirement, to any response action undertaken at such a facility.

The section provides that prior to commencement of a Remedial Investigation and Feasibility Study (RIFS), the Administrator shall notify the State of such action. If within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of RIFS which adopt such State requirements unless the State waives such requirements. This section states that compliance with these requirements shall be deemed to be compliance with the State environmental impact statutes. The Committee intends that these requirements take effect upon enactment of this section.

This section also requires that with respect to remedial actions involving hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides the following:

—a destruction and removal efficiency meeting or exceeding 99.9999 percent;

—a treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment;

—protection against emissions of hazardous substances, pollutants, or contaminants into the air during normal operating and equivalent protection during nonsteady operations including start-up, shut-down, and power failures;

—protection against secondary formation of halogenated dioxins and dibenzofurans.

However, the section states that these requirements shall not apply if the Administrator determines that:

—an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

—there will be no human exposure to the hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans.

This section has a specific requirement which states that no State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply:

—such permit was issued after January 1, 1983 and before November 1, 1984;

—the transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

Finally, this section states that in any evaluation under this section of the cost effectiveness of a response action, the Administration shall require a value engineering review for any response action to be carried out under this Act by the United States, a State, or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances, pollutants, or contaminants, and including the cost of operation and maintenance, is project to exceed $4,000,000. The term "value engineering reviews" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Section 121—Settlements

This section established a series of provisions designed to encourage and facilitate negotiated private party cleanup of hazardous substances in those situations where negotiations have a realistic chance of success. The Committee believes that encouraging such negotiated cleanups will accelerate the rate of cleanup and reduce its expense by tapping the technical and financial resources of the private sector. The emphasis on negotiated cleanups, however, is not intended to replace or diminish a strong and aggressive enforcement policy, but rather to complement it.

The first provisions of this section confirms the authority of the Administrator to enter into agreements with interested parties to carry out the response authorities granted to the Administrator under the Act. The Administrator is encouraged to enter into settlements where they are in the public interest. He may enter into agreements with a few of the parties responsible for a specific facility as he determines. There is nothing in this section that would prohibit the Administrator from entering into agreements for action under Section 104(b) without a commitment to undertake remedial action.

It is the intention of the Committee to have all agreements relating to the undertaking of remedial action reviewed by a United States District Court before the agreement becomes binding on the parties. In order to accomplish this goal of review, all agreements regarding cleanup must therefore be couched in terms of a consent decree under Section 106 because this is the only section where a settlement agreement can be revised or enforced by a court.

Negotiated private party actions are essential to an effective program for cleanup of the nation's hazardous waste sites and it is the intent of this Committee to encourage private party cleanup at all sites. A balanced approach relying on a mix of fund-financed cleanup, negotiated voluntary agreements and litigation offers the greatest opportunity for accelerating cleanups.

In negotiating private cleanup, the Committee generally endorses the goal of EPA's current settlement policy (50 Fed. Reg. 5034, (1985)) which is to obtain complete cleanup by the reasonable parties or collect 100 percent of the costs of the cleanup action. This goal, however, should not stand in the way of private party settlements for less than 100 percent where such settlements will expedite cleanup and are in the public interest. To that end, the section confirms the authority of the Administrator to mix funds from Superfund with private party monies, where appropriate considering the criteria set forth in the EPA's settlement policy, so as to enable response action by the settling parties to proceed as quickly as possible. The Administrator may reimburse the parties for some of the cost of the activities under 104(b) or the remedial action when he can reach agreement with those parties who want to settle. The Fund may then be used on behalf of those parties who are unknown, refuse to settle or are insolvent. Such reimbursement shall be made under such terms as are appropriate under the circumstances of the case. For example, it may be appropriate for the Fund to make reimbursements in increments. The Administrator retains the right to seek recovery against any non-settling parties under Section 106 or 107 of the Act.

This section also establishes special procedures regarding the provision of information and time periods for negotiation where the Administrator determines that a period of negotiation under the subsection would facilitate an agreement. In that case, parties are to be given information regarding the site in question, the substances in the site and the other parties involved in the site. The list of information to be provided to the potentially responsible parties (PRPs) is the minimum information which the Committee believes is necessary to allow the PRPs to organize themselves and produce a settlement offer. This list is not to be construed as a limitation. The Committee recognizes the need of PRPs to have information regarding the site and involvement of other parties in it. The failure to provide adequate information to the extent available, in the early stages of negotiation, may force PRPs into litigation in order to obtain necessary information through the discovery process. This should be avoided in those situations where the Administrator determines that good faith negotiations are possible.

The section also sets out negotiation time periods and moratoriums (except where there is a significant threat to public health) on action by the Administrator. These time periods are also not to be construed as an absolute limitation on the Administrator where he determines that to impose them would cut off good faith negotiations. Extensions may be granted in the discretion of the Administrator where there is no threat of seriously delaying cleanup action and where progress has been made in achieving a settlement. Use of established time periods and moratoriums is designed to give both sides to the negotiations some expectation as to the duration of the process, and to enable the Administrator to pursue other action if negotiations are not proceeding adequately. Superfund negotiations may be extremely complex, involving many parties and complex technical information. In some negotiations it may be unreasonable to expect the private parties to organize and produce a settlement offer in 60 days.

The section also addresses the issue of releases from liability in the form of covenants not to sue. The Committee intends to confirm the Administrator's authority to use covenants not to sue where they are appropriate and in the public interest. The section sets out the following factors to be considered in determining whether the covenant is in the public interest:

> "(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facilitiy concerned.
>
> "(B) The nature of the risks remaining at the facility.
>
> "(C) The extent to which performance standards are included in the order or decree.
>
> "(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.
>
> "(E) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility."

While the Committee generally endorses EPA's current settlement policy, no attempt has been made to codify each aspect of that policy. The Administrator is authorized to include in an agreement referred to in this section any provisions allowing future enforcement action under this section that he determines are necessary and appropriate to assure protection of public health, welfare, and the environment. The Committee has not, however, specifically mandated boilerplate "re-openers" because the public interest, based on the particular circumstances of an individual case, may dictate a more limited or a more expansive release. In this connection, the Committee specifically notes its disapproval of the releases granted in the settlements entered into in the *Seymore Recyling* case and the *Inmont* case and expects and intends that any comparale releases that might be presented for court approval would be rejected as not in the public interest. This section also provides that the Administrator may reach a final settlement with, and grant releases from liablity to, de minimus contributors at the facility.

Finally, the section provides that all issues and matters in the voluntary settlement are subject to challenge and reviewable by the Federal District Court in the consent degree process except the Administrator's determination to reimburse parties from the Fund. This legislation preserves all rights of any person under existing law, including the right to file suit, the right to intervene and to be a party in the case.

Section 122—Reimbursement to local government

This section requires the Administrator to promulgate rules setting out procedures under which the Administrator would reimburse units of local government for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. The amount of any reimbursement may not exceed $25,000 for a single response. Not more than 0.1 percent of the total amount of the Fund may be used for such reimbursements over a five year period starting September 1, 1985.

Section 123—Landfill gas operators

This section provides an exemption from liability under Superfund and certain State laws for landfill gas operators at facilities at which such operators are recovering gas. The exemption would not apply if the operator otherwise would have been a responsible party at the site, as defined by section 107, or if the release of hazardous substances from the site is caused by a landfill gas operator who was negligent, reckless or who acted with intentional misconduct.

The section also provides that landfill gas operators shall not be deemed to manage, generate, transport, treat, store or dispose of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act. However, the aqueous or hydrocarbon phase of the condensate, if meeting the characteristics under 3001 of the Solid Waste Disposal Act, will be regulated accordingly under that Act. Condensate removed from gas shall not be returned to the landfill in a container unless treated so that it is no longer a free liquid.

The purpose of this amendment is to encourage persons to recover and process methane from landfills, in recognition of the substantial energy and public health benefits that result from these activities. Liability to employees for workplace incidents is expressly excluded by section 101(22) of CERCLA and thereby preserved.

Section 124—Section 3001(b)(3)(A)(i) Waste

Section 124 of this bill adds a new section 125 to title I of CERCLA that relates to the procedures for evaluating and listing on the National Priority List (NPL) facilities that contain waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. This waste includes fly ash and other wastes that relate to the combustion of coal or other fossil fuels.

Subsection (a) of this new section requires the Administrator of the Environmental Protection Agency (EPA) to revise the Hazard Ranking System (HRS)—commonly known as the Mitre Model—as it applies to facilities that contain substantial volumes of such waste in a manner which assures appropriate consideration of the following site-specific characteristics of such facilities:

—the quantity, toxicity and concentrations of hazardous constituents that are present in such waste, and a comparison thereof with other wastes;

—the extent of, and potential for, release of such hazardous constituents into the environment; and

—the degree of risk to human health and the environment posed by such constituents.

Subsection (b) of this new section provides that, prior to the completion of the required revision of this HRS, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constituents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

This section applies only to facilities that are not now included or proposed for inclusion on the NPL.

TITLE II—MISCELLANEOUS PROVISIONS

Section 201—Post-closure liability trust fund

The issue of post-closure liability is in need of more extensive and current examination in view of the major changes enacted in 1984 to the Solid Waste Disposal Act and the increasing unavailability of private environmental pollution insurance.

Therefore, section 201(b) directs the Administrator, in consultation with the Secretaries of the Treasury and Commerce, to conduct a comprehensive study of options for the management of liabilities associated with hazardous waste disposls sites following closure. The Committee regards this study as extremely important in view of the numerous barriers to insurance coverage for these sites and the need for the public's long-term protection in the event remedial action is required. The Committee strongly believes that developing some form of viable post-closure program may help prevent the need for a perpetual superfund program, and the Administrator should devote adequate resources and talent to the timely completion of this report.

The Committee intends that the Agency explore and carefully examine all potential methods of financing a post-closure program. These include, but would not be limited to, insurance provided through government assistance, pooled-risk insurance, fees on treatment, storage and disposal facilities that are permitted under the Solid Waste Disposal Act, and government bonds. It is entirely possible that a combination of financing mechanisms would be necessary.

In recognition that many of the questions to be dealt with in this study involve matters in which the Departments of the Treasury and Commerce have considerable experience, this provision directs the Administrator to consult with these Departments. Moreover, in preparing this report and developing recommendations, the Administrator should also draw upon the private sector and academia, including those with expertise in hazardous waste management, insurance and financing and other interested and affected persons.

Section 202—Natural resource assessment regulations

This section requires agencies charged with responsibility for developing regulations governing the assessment and compensation of natural resource damage claims to promulgate such regulations within six months after the date of enactment of the legislation.

In the opinion of the Committee, the Department of the Interior should promulgate regulations so that parties may recover such damages from parties responsible for damage of natural resources.

Section 203—Transportation of hazardous materials

This section requires the promulgation of regulations by the Department of Transportation requiring shippers to notify transporters whenever hazardous substances are offered for transportation.

This section fills a gap that has developed in the regulation of hazardous substances. Currently, there is no requirement that a shipper inform a transporter that a commodity being tendered for transportation is a hazardous substance unless that substance is regulated pursuant to the Hazardous Materials Transportation Act. As a result, a transporter receiving a hazardous substance might not take precautions that would be taken if the nature of the shipment were known. If a spill occurs, the transporter might be liable for damages caused by the spill even if he was not negligent and could have avoided the damaged if he had been informed of the nature of the substance prior to the accident. If notification is required for hazardous substances, transporters would be able to take proper precautions when handling the substance.

Section 204—State procedural reforms

State statutes of limitations define the time in which an injured party may bring a lawsuit seeking compensation for his injuries against the party alleged to be responsible for those injuries. These statutes usually run from 2 to 4 years, depending on the State. In the case of a long latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury—rather than from the time when the party "discovers" that his injury was caused by the hazardous substance or pollutant or contaminant concerned.

The study done pursuant to Section 301(e) of CERCLA by a distinguished panel of lawyers noted that certain State statutes deprive plaintiffs of their day in court. The study noted that the problem centers around when the statute of limitations begins to run rather than the number of years it runs.

This section addresses the problem identified in the 301(e) study. While State law is generally applicable regarding actions brought under State law for personal injury, or property damage, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, a federally required commencement date for the running of State statutes of limitations is established. This date is the date the plantiff knew, or reaonably should have known, that the personal injury referred to above was caused or contributed to by the hazardous substance or pollutant or contaminant concerned. Special rules are noted for minors and incompetents.

Section 205—Conforming amendment to funding provision

This section changes the name of the "Hazardous Substance Response Trust Fund" to the "Hazardous Substances Superfund." It also ensures that money in the Hazardous Substance Response Trust Fund shall only be available for expenditure as provided in this Act under Section 111, "Uses of Fund."

Section 206—Cleanup of petroleum from leaking underground storage tanks

This section establishes a program under section 9003 of the Solid Waste Disposal Act to provide for the cleanup of leaking underground storage tanks. The Committee feels this cleanup program is best suited as an amendment to the Solid Waste Disposal Act because it takes advantage of the substantial effort already under way in the leaking underground storage tank regulator program enacted last year in the Solid Waste Disposal Act Amendments of 1984.

Before the effective date of regulations concerning corrective action for underground storage tanks containing petroleum products, the Administrator is authorized to undertake corrective action or require the owner or operator of such tank to undertake corrective action. Funds in the Petroleum Release Response Account of the Hazardous Substance Trust Fund shall be available to the Administrator when he undertakes such corrective action. The standard of cleanup in both situations is that which is necessary to protect human health and the environment.

Following the effective date of the corrective action regulations, it is the intent of the Committee that the responsible owner/operator take the required corrective action in the event of a leak. However, the section states that the Administrator shall undertake corrective action if no solvent owner or operator can be located, if a situation exists which requires prompt response to protect human health or the environment, or if the owner or operator has refused to comply with a corrective action order.

This section would allow the Administrator or the state to recover the costs of a fund-financed corrective action from owners or operators under the standard of liability obtained under section 311 of the Federal Water Pollution Control Act. Under section 311 liability is strict, that is without regard to fault or willfulness. Section 311 has also been interpreted by the courts to allow for the application of joint and several liability. See *United States.* v. *Hollywood Marine,* 519 F. Supp. 688 (S.D. TX 1981); *In Re Berkley*

Curtis Bay Co., 557 F. Supp. 335 (S.D. NY 1983). The Committee intends that the defenses set forth in section 311 apply.

Liability under this section is limited to $3,000,000 for each corrective action taken at a facility at which a release of petroleum from an underground storage tank occurs. This $3,000,000 limit on liability for owners or operators shall remain in effect until the Administrator promulgates the financial responsibility regulations under this section and determines whether the limitations on liability under this section are appropriate. At that time, if the Administrator determines that limitations on liability are not appropriate, the Committee intends that the Administrator shall promulgate regulations removing all such limitations. If the Administrator determines that some limitations may be appropriate, the Administrator is authorized to promulgate regulations establishing limits on liability applicable to various categories of owners and operators and to adjust the $3,000,000 cap. The Committee feels that certain distinctions between the liability of differing sizes of owners or operators may be warranted in view of availability of insurance for liabilities under this title. This section directs the Administrator to make those judgments based upon the results of a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. In addition, the Administrator is instructed to consider other such factors as the volume of petroleum handled, the effect of liability on the small business segment of the petroleum marketing industry, and others he or she may deem pertinent.

The $3,000,000 limit on liability is not applicable when the owner or operator acts out of willful misconduct or willful negligence, or when the owner or operator fails or refuses to provide all reasonable cooperation and assistance in connection with a corrective action.

Under no circumstance shall this section affect or modify contract or other agreements between owners, operators, or third parties.

This section would permit the Administrator to authorize states to carry out his functions under the legislation. The Administrator may make grants to states from the Petroleum Response Trust Fund based upon the number of underground storage tanks located in each state.

Section 207—Citizen suits

The section provides authority for the initiation of citizen suits against the following persons:

> Any person (including the United States and any other governmental instrumentality or agency) who is alleged to be in violation of any requirement which has become effective pursuant to the legislation or current law;
>
> The Administrator of the Environmental Protection Agency where he or she is alleged to have failed to perform any act or duty under the legislation and current law which is not discretionary; or
>
> Any other department, agency or instrumentality of the United States where it is alleged to have failed to perform any

act or duty under this legislation and current law relating to releases of hazardous substances or pollutants and contaminants at federal facilities (Section 119) which is non-discretionary.

The section further states that any citizen suit shall be brought in the district court for the district in which the alleged violation occurred. Any citizen suit brought against the Administrator or any other department, agency or instrumentality of the United States for failure to perform a non-discretionary duty or act may be brought in the United States Court for the District of Columbia. The section provides that the district court shall have jurisdiction to (a) enforce such requirement; (b) order the Administrator or other department, agency, or intrumentality to perform such act or duty; and (c) apply any appropriate civil penalties.

The section states that the plaintiff in any citizen suit must give 60 days of notice of any violation to the EPA Administrator, the state in which the alleged violation occurs, and any alleged violation before commencing the lawsuit.

The section further provides that no suit may be brought against an alleged violator of CERCLA's requirements if the Administrator has commenced and is diligently pursuing action to enforce such requirement or to impose a civil penalty with respect to a violation of such requirement. The section also states that the plaintiff in a citizen suit to enforce a nondiscretionary duty of act must give 60 days of notice to the Administrator or other department, agency or instrumentality.

The section permits the court to award reasonable attorneys' and expert witness fees, as well as the costs of litigation to any prevailing or substantially prevailing party. It also permits the court to require the filing of a bond or equivalent security in cases where a temporary restraining order or preliminary injunction is sought, in accordance with Federal Rules of Civil Procedure.

The section states that it does not restrict the rights citizens may have under any other Federal or state law, and preserves both statutory and common law remedies.

It also provides that the Administrator, if not a party to any citizen suit, may intervene in such suit as a matter of right.

This section will enable interested communities to enforce the mandatory duties and requirements of the Act, as they pertain to response actions undertaken by EPA, Federal facilities, or responsible parties. The section provides a safeguard for citizens who have been unable to obtain redress from EPA, other Federal facilities, states or responsible parties.

Section 208—Indian tribes

This section adds a definition of "Indian tribes" in section 101 of CERCLA. The section also provides that the requirements for prior assurances from a state that it will pay a share of the costs of remedial action and future maintenance shall not apply to actions on Indian lands; and that in such cases the Federal government, instead of the state, shall assure that the availability of acceptable facilities to manage any hazardous substance removed from the site. The section also authorizes Indian tribes to recover damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substance. Finally, the section amends certain provisions of CERCLA to afford Indian tribes substantially the same treatment as states.

Section 209—Commencement of drilling fluids, etc. study

This section requires the Administrator to commence the study required by section 8002(m) of the Solid Waste Disposal Act within six months after date of enactment of this legislation. Section 8002(m) of the Solid Waste Disposal Act Amendments of 1980 required the Administrator to conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment. That study was required to have been completed within 24 months after the date of enactment of the Solid Waste Disposal Act Amendments of 1980. The Environmental Protection Agency has yet to comply with section 8002(m). Accordingly, this section mandates that the Agency commence the study.

Section 210—Insurability study

This section directs the Administrator to appoint a study group to examine the availability of insurance for environmentally related liabilities. The study group will consist of Federal officials who administer environmental laws, insurers, reinsurers, potential insureds and potential claimants. The group is to report back to Congress with appropriate recommendations within 18 months.

The Committee has been informed that there is a growing lack of availability of insurance for businesses and units of government who use, generate, treat or dispose of hazardous substances. This problem results from the confluence of several factors: diminished capital of insurers resulting from a period of intense price competition; judicial trends regarding policy interpretation that have called upon old policies to pay for claims that were not envisioned at the time the policies were written: and unpredictable and changing statutory liabilities. The Committee believes a study of the insurance availability problem and the factors giving rise to it is needed to help the Committee anticipate financial assurance problems associated with Federal environmental laws.

Section 212—Releases associated with brine disposal

Brine is an extremely saline fluid pumped up from the producing zone in the production and recovery of oil and gas. These drilling brines, which have much higher levels of chloride than ordinary salt water, can pose a serious threat to public health and the environment through releases into the groundwater and surface waters unless disposed of properly. Although most States dispose of this toxic substance properly, it is the Committee's sense that this section is necessary to ensure proper disposal in those few areas where there may be a disposal problem.

There are two methods of brine disposal that may be environmentally unsound under certain circumstances. These methods may allow brines to be released into the environment by leaching into surface or groundwater and so, very often, into sources of drinking water supplies. The first is annular injection, a process by which brines are reinjected between the surface and production casings of an active well, which may be inadequate if States do not act to ensure proper geologic, hydrologic and other physical conditions and methods of disposal. The second is disposal in unlined surface impoundments where there may be a negative impact on surface or groundwater which may potentially be sources of drinking water. The Committee is especially concerned about permanent disposal in unlined impoundments, as opposed to temporary or emergency storage in such impoundments.

Brine presents the most significant problem in the State of Ohio, which has older oil and gas-producing wells; as the product depletes, brine makes up a higher proportion of the fluid pumped and so creates a more pressing disposal problem. This section, therefore, is particularly aimed at Ohio, which has proven to be remiss in its enforcement of brine-related problems.

Section 210 instructs the EPA Administrator to conduct a review of State programs to protect public health and the environment in States where annular injection is permitted and where there are more than 2,500 active annular injection wells as of the date of enactment. No review is authorized under this section in those States with less than 2,500 active annular wells. If the Administrator determines that any State subject to this review is not adequately protecting public health and the environment from releases into the environment associated with the annular injection or surface disposal of brines, the Administrator must take or order enforcement or corrective action to assure protection of the public health and the environment from endangerment caused by such releases. Nothing in this section requires that enforcement action be taken on a statewide basis. It may be directed at individual disposal practices.

The section further provides civil penalties, enforceable through the courts, for anyone not in compliance with an enforcement or corrective action taken or ordered by the Administrator. The court may also enter any other judgment as protection of public health and the environment may require.

Finally, the section sets a deadline of 18 months after enactment for the Administrator to complete the review and initiate enforcement or corrective action.

TITLE III—COMMUNITY RIGHT TO KNOW AND EMERGENCY PLANNING

Subtitle A—Community Right to Know

Section 301—Basic notification requirements

The Occupational Safety and Health Administration (OSHA) has promulgated a Hazard Communication Standard, codified at 29 C.F.R. 1910.1200. These regulations establish a Federal "employee right to know" program by which certain workers have access to information concerning the hazards of the chemical material with which they may come in contact.

Title III of H.R. 2817 expands this principle by establishing a Federal "community right to know" program whereby citizens in the locality where a hazardous chemical is manufactured, used, stored or handled have access to the same information as do workers under the OSHA standard. Section 301 establishes the basic requirement of the program which is that each owner or operator of a facility which produces, uses or stores a hazardous chemical (as defined in section 324) must file a material safety data sheet (MSDS) with the appropriate State and local officials. The requirement takes effect as of July 1, 1986. Most importantly, the MSDS required by this section shall contain the same information as required by the OSHA regulations. It is the intent of the Committee that needless duplication be avoided whenever possible. Therefore, the Federal community right to know program established by this title is intended to be an extension of the OSHA Hazard Communication Standard. Whenever OSHA requires the revision of an MSDS, section 301(a)(1) requires that the revised sheet be filed with the appropriate officials not later than 3 months after such revision.

It is the clear intent of the Committee that the transportation and incidental storage thereto of hazardous chemicals are not covered by the requirement of this title.

Section 302—Public availability of material safety data sheets

Once the material safety data sheets are developed, it is crucial that they be made available to the public in the quickest, most efficient way possible. Section 302 requires each governor by May 1, 1986, to designate appropriate State and local or regional agencies within the State, as required recipients of MSDSs and other information developed pursuant to this subtitle. The designated agencies then must make the information available to the public. The exact number and types of designated agencies or repositories is left to the governor. The Committee stresses, however, that this section requires that all population groups that are located in an area where they may come in contact with a hazardous chemical, whether it is because they are near a chemical manufacturing plant or a plant which uses the chemical, must have reasonable access to the information. This means that they should not have to travel a great distance to reach the nearest repository. Furthermore, the repository should be open at reasonable hours.

Section 303—Availability of material safety data sheets to other owners and operators

Although an MSDS is developed only by a manufacturer or importer of a chemical, it is important that the information be given to all others who handle the substance. They must then make it available to citizens in their areas.

This section, therefore, requires each facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish the MSDS. The sheet must be transmitted before, or at the time of, the initial shipment of the hazardous chemical. When an MSDS is revised, as required by OSHA and section 301 of the bill, the revised sheet must be transmitted before, or at the time of, the first shipment following the revision. The sheet can accompany the shipment, or be sent under separate cover prior to the time of the shipment.

If any facility owner or operator receives a shipment of hazardous chemicals and does not receive an MSDS, that owner or operator must make reasonable efforts to contact the manufacturer or importer and request the sheet. Such efforts must be documented by such methods as retaining copies of any correspondence sent or records of phone calls made. This again tracks requirements which already exist under the OSHA regulations.

The requirements of section 303 take effect with respect to shipments that take place after May 1, 1986.

Section 304—Provision of information of health professionals, doctors, and nurses

This provision basically supplements the trade secret requirements of section 323. It does this by providing for exceptions to the withholding of certain information if such information is needed by a health professional.

Section 304 requires a facility owner or operator to provide the specific chemical identity of a hazardous chemical to any health professional who requests it in writing, if the health professional provides a written statement of need and a written agreement of confidentiality. In the case of a treating physican or other health professional, the written statement of need shall provide that the requester has a reasonable basis to suspect that the information in needed for purposes of diagnosis or treatment of an individual who has likely been exposed to the substance. The requester also must have a reasonable basis to suspect that knowledge of the specific chemical identity of the substance will assist in diagnosis or treatment.

In the case of a treating physician or other health professional faced with a medical emergency, the requirement to submit a written statement of need or a confidentiality agreement prior to disclosure of the specific chemical identity is waived. For this to occur, the requester must determine that a medical emergency exists, that the withheld information is necessary for diagnosis or treatment, that exposure to the chemical in question has occurred, and that knowledge of the specific chemical identity will assist in diagnosis or treatment. As soon as circumstances permit following the medical emergency, the facility owner or operator that disclosed the information may require the health professional to submit a written confidentiality statement and to set forth the determination of need outlined in the previous sentence.

Section 304 also permits State and local government health professionals (or persons under contract to such government) to obtain the specific chemical identity of a substance after providing the same two written statements discussed above. In the case of these health professionals, the written statement of need shall describe in detail one or more of the following health needs: to assess the hazards of a chemical to which persons living in a state or local community may be exposed; to conduct or assess atmospheric sampling to determine exposure levels; to conduct medical surveillance of exposed persons; to treat exposed persons or groups; or to conduct studies to determine the health effects of exposure. In all cases, whether the requester is a treating physician, is dealing with a medical emergency, or is affiliated with the State or local government, the facility owner or operator must promptly provide the requested information. The authority under section 323 to withhold information does not apply in these circumstances.

The written confidentiality agreement required by this section must state that the requester will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreeement or by the facility owner or operator that discloses the information. The facility owner or operator has the authority to provide, within the agreement itself, for appropriate legal remedies in the event of a breach of the agreement, including stipulations of a reasonable pre-estimate of likely damages. The requester not only must not use the information for other than stated purposes but is, of course, responsible for safeguarding the information so that other cannot misuse it.

Subtitle B—Emergency Response

Section 311—Emergency response planning

Subtitle B of H.R. 2817 establishes a Federal requirement for developing comprehensive plans for each relevant State and locality to address chemical emergencies within a community. The Federal requirement is implemented, however, solely at the State and local level.

Section 311 requires each governor, within 90 days of enactment, to appoint a Hazardous Substance Emergency Response Commission to coordinate response planning in the State for hazardous substance emergencies. Within 120 days of designation, each Commission must designate local Emergency Response Committees to develop Emergency Response Plans for each community where the presence of hazardous substances so dictates. The number of Emergency Reponse Committees in each State is within the discretion of the Emergency Response Commission, with consultation of the localities and governor. There is no penalty for violation of the timeframes outlined above, but the Committee feels that the strong public sentiment for emergency planning will ensure prompt action. Each local Committee, which must have among its membership representatives of the effected community, shall develop Emergency Response Plans. Each Committee shall consult with all persons or organizations expected to play a major role in addressing an emergency, including police, fire, public health, medical, civil defense and transportation personnel. At the request of the Committee, each facility owner or operator (as defined in Section 324(4)) in the community must provide assistance in preparing the Plan. This is the current policy expressed in the Chemical Manufacturers Association Community Awareness and Emergency Response (CAER) policy.

Public comment on the Plan must be solicited during its development, and at least one public hearing must be held. Each Committee has 20 months to issue a final Plan.

The Plan must, at a minimum, contain the following information:

—the appropriate names and telephone numbers of personnel at appropriate facilities;

—a designation of the State or local official in charge of responding to an emergency;

—a description of notification procedures and alarm and warning systems to be utilized;

—a description of emergency equipment and facilities available in the community and at the appropriate facilities;

—an explanation of the types of measures that may be taken to investigate and minimize the risks posed by an emergency;

—evacuation plans; and

—a description of training schedules and drill programs to be used, as well as an evaluation of medical, police and fire fighting resources which are available.

Each Emergency Response Plan must be designed to protect public health and the environment in the event of a hazardous substance emergency as defined in section 324(6). Each Committee has the discretion to adopt or integrate existing plans which meet the requirements of this section. Only facilities which maintain a substantial inventory of a hazardous substance must meet the specific requirements for a facility contained in this subtitle. A "Substantial inventory" of a hazardous substance is an amount which, in the face of an industrial accident at such facility, could result in some injury to human health in the community.

Section 312—Emergency information

The previous section is intended to ensure that each local community is prepared to address a hazardous substance emergency in the best way possible. Section 312 is intended to assist the community by requiring the facility at which the emergency originates to promptly provide necessary information to the locality.

Each facility owner and operator at which a hazardous substance emergency occurs must immediately notify the appropriate officials and provide all relevant information known at that time. This notification can, and almost always will, be verbal. As soon as possible after the emergency, the owner or operator must furnish an Emergency Bulletin to the State and local officials designated to receive such a document, and the Bulletin shall be made available to the public. It is the Committee's intent that the Bulletin be issued as soon as possible after the emergency, and only the urgency of abating the emergency shall prevent its issuance. All of the circumstances surrounding the emergency need not be known to issue a Bulletin, supplemental Bulletins can be released as further data is developed and analyzed.

Each Bulletin must include a full description of the emergency as well as the chemical name of the substance, the quantity involved, the time and duration of the release, the action taken to respond to the situation and any known or anticipated acute or chronic health risks associated with the emergency. If the facility owner or operator is aware of the appropriate treatment for potential injuries which may result from the release, then that treatment also must be included in the Bulletin.

Subtitle C—General Provisions

Section 321—State and local law

Subtitle A of Title III establishes a Federal community right to know program. Section 321 clarifies the role in this Federal program of State and local governments, both those which have adopted some form of right to know legislation and those which may be contemplating doing so.

Section 321 clarifies that any State or local government can require the submission of information related to hazardous chemicals, with certain restrictions. First, all State and local laws dealing with such submissions which were enacted prior to August 1, 1985, are completely unaffected by this title. "Enacted" means that the bill in question was signed into law by the governor. The actual date the bill takes effect does not control the date of enactment. Second, any State or local law enacted after August 1, 1985, must be identical to the requirements of this title in two key ways.

First, any future law which requires the submission of a material safety data sheet from facility owners or operators must require that the data sheet be identical in content and format to that required under section 301. Second, any State or local law enacted after August 1, 1985, which requires manufacturers or importers to distribute MSDSs to their customers, must follow the requirements of section 303 concerning the availability of MSDSs to other owners and operators. Because a great deal of the hazardous chemicals covered by this title will be traveling in interstate commerce, it makes sense that the Federal law should control in this area.

Section 321 also provides that States or localities may require the submission of additional information which is supplemental to that which is required on an MSDS. It is the intent of the Committee that such additional requirements be reasonable and concise. It would be most unfortunate if the public's ability to learn about hazardous chemicals in its midst would become impaired because of a plethora of inconsistent, impractical State and local requirements. A very thorough, clear Federal plan for information submission and dissemination has been laid out in this title, and it is the Committee's hope that even where there is some discretion, States and localities will follow the Federal program closely.

Finally, nothing in this section limits the authority of States to preempt any local law relating to the submission of information concerning hazardous chemicals.

Section 322—Enforcement

To provide for the enforcement of the many requirements of Title III of H.R. 2817, this section establishes a system of civil penalties. Such penalties can be collected in an action brought by the United States in the U.S. District Court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

The following violations are subject to a $20,000 civil penalty:

—failure to furnish an MSDS as required in section 301;

—failure to provide information to a physician or nurse in accordance with section 304(b);

—failure to furnish a notice or an emergency bulletin as required by section 312; or

—failure to furnish information withheld from an MSDS under section 323(a) (trade secrets) when requested by EPA as part of a review under section 323(b).

Any manufacturer or importer who does not comply with the requests of section 303 concerning distribution of MSDSs to other facility owners or operators is subject to a civil penalty not to exceed $5,000 per violation.

Section 323—Trade secrets

The purpose of the MSDS requirement is to make necessary information available to those who might be exposed to a chemical. This includes information on the identity of the chemical, the chemical and common name of all ingredients which present a physical hazard, the physical and health hazards associated with the chemical, the primary routes of entry, the permissible exposure limit, the possible carcinogenicity of the chemical, applicable precautions to be taken, emergency and first aid procedures and the name, address and telephone number of the manufacturer or importer. This is the type of information which will assist citizens in assessing the potential hazards associated with particular chemicals.

Section 323 authorizes manufacturers and importers of hazardous chemicals to withhold from the sheet, under certain circumstances, the specific chemical identity of a hazardous chemical, including the chemical name and other specific identification. This information can only be withheld as a trade secret if the following burdens can be met:

(1) the facility owner or operator has not disclosed the information to any person other than an employee or a person who is bound by a confidentiality agreement;

(2) the information is not required to be disclosed to the public under any other Federal or State law; and

(3) knowledge of the withheld information may give the facility owner or operator an opportunity to obtain an advantage over competitors who do not know or use such information.

These three situations which support a trade secret claim are well known in common law and are generally followed by the OSHA regulations. It is important to note that the mere fact that someone else has knowledge of the information is not sufficient to negate a trade secret claim. For instance, someone could have knowledge of the chemical identity of a substance but not know how to use it, therefore it is worthless to them and still of special value to the company that is making the trade secret claim.

The OSHA Hazard Communication Standard cited earlier, deals comprehensively with the issue of trade secrets. The United States District Court of Appeals for the Third Circuit recently upheld the vast majority of the trade secret provisions continued in the OSHA regulations. In *United Steelworkers of America, AFL-CIO-CLC* v. *Thorne G. Auchter,* 763 F.2d 728(3d cir. 1985), the Court did, however, remand a portion of these provisions back to OSHA. The Secretary of Labor is expected to publish new rules pursuant to the court decision within the next few weeks. Section 323 requires the

Administrator of EPA to prescribe trade secret regulations which are identical to the OSHA regulations, consistent with the three situations required above, except for provisions relating to the procedure for the review of petitions challenging trade secret claims and any minor conforming changes which may be appropriate.

EPA must establish its own review procedure allowing affected citizens to petition the Administrator to review a trade secret claim. The Committee intends that EPA will closely follow similar procedures for review which have been established by the OSHA regulations. This would include the authority to have EPA Regional offices make the initial determination as to which petitioners are "affected citizens" who are entitled to have their petitions ruled upon. It is not the intent of this section that any citizen, for any reason, regardless of need, be allowed to challenge a trade secret claim. A determination by the Administrator on the petition shall be reviewable in any appropriate United States district court. This would include the United States District Court for the District of Columbia or the district in which the petitioner resides or in which the petitioner or facility's principal place of business is located. The trade secret regulations to be prescribed under section 323(b)(1) shall be promulgated as soon as practicable after the date of enactment of this bill. The regulations to be prescribed under section 323(b)(2) concerning petitions for review shall be promulgated no later than 4 months after the date on which the regulation under paragraph (1) become final.

Section 324—Definitions for title III

Title III of H.R. 2817 uses a number of terms, some of which are new to CERCLA and some which are defined elsewhere in the current statute. In this latter category, the definitions in this section may differ for purposes of Title III only. Therefore, the Committee stresses that all of the definitions in section 324 apply exclusively to these terms as they are used in Title III.

Section 324(1) defines "Commission" as a Hazardous Substance Emergency Response Commission designated by a governor under section 311. The term "hazardous chemical" means any substance treated as a hazardous chemical under the OSHA Hazard Communication Standard. This open-ended list of chemicals will constantly expand because under the OSHA regulations, if any valid study reports a statistically significant conclusion regarding the health effects of a chemical, that chemical must be added to the list. The following substances shall not be treated as "hazardous chemicals."

(1) Any food, food or color additive, drug or cosmetic regulated by the Food and Drug Administration;

(2) Any manufactured item which contains a hazardous chemical present as a solid which does not result in exposure to the hazardous chemical;

(3) Any substance used for personal, family or household purposes;

(4) Any substance used in a laboratory, hospital, or medical facility for research or other purposes; and

(5) Any substance used in the routine agricultural operations.

The term "material safety data sheet" means the sheet developed for a hazardous chemical pursuant to the OSHA regulations. The types of information required on the MSDS are contained in the OSHA regulations codified at 29 C.F.R. 1910.1200 and summarized in the discussion of section 323 above.

"Facility owner or operator" means the owner or operator of a facility at which a hazardous chemical is produced, used or stored. It does not include one who merely transports the chemical or provides incidental storage of the chemical as part of the transportation function. The term "person" is any individual, corporation, partnership, association or other entity. A "hazardous substance emergency" is a release of a hazardous substance which is unexpected or not continuous and substantially in excess of the normal amounts released as a result of routine manufacturing, processing or storage. The term also means any "reportable quantity" under section 102 of CERCLA, if it poses a substantial threat to public health or the environment, based on regulations to be promulgated by the Administrator of EPA.

A "hazardous substance" is a TLV hazardous substance, a combustible liquid, a flammable gas, a flammable liquid, a flammable solid, or a reactive substance which may present an imminent and substantial endangerment to public health. The terms "combustible liquid," "flammable gas," "flammable liquid," and "flammable solid" have the same meaning as these terms are defined in the OSHA Hazard Communication Standard (29 C.F.R. 1910.1200). The Hazard Communication Standard defines the terms as folows:

"Combustible liquid" means any liquid having a flashpoint on or above 100°F (37.8°C), but below 200°F (93.3°C) except any mixture having components with flashpoints of 200°F (93.3°C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Flammable" means a chemical that falls into one of the following categories:

> "Aeroso, flammable" means an aerosol that, when tested by the method described in 16 C.F.R. 1500.45 yields a flame projection exceeding 18 inches at full valve opening, or a blashback (a flame extending back to the valve) at any degree of valve opening;
>
> "Gas, flammable" means:
>
> > (a) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen percent by volume or less; or
> >
> > (b) A gas that at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve percent by volume, regardless of the lower limit;
>
> "Liquid, flammable" means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.
>
> "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in 29 C.F.R. 1910.109(a), that is liable to cause fire through friction, absorption or moisture, spontaneous chemical change, or retained heat from manufac-

turing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 C.F.R. 1500.44, it ignites and burns with self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100:F (37.8:C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS a 100:F (37.8:C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D3278-78)).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Mixture" means any combination of two or more elements if the combustion is not, in whole or in part, the result of a chemical reaction. Mixtures are evaluated in the same manner as they are (for physical and health effects) under the Hazard Communication Standard. See 29 C.F.R. 1910.1200(d); 48 Fed. Reg. 53290-53292; 48 Fed. Reg. 53342-43.

The term "reactive substance" is defined by OSHA Hazard Communication Standard as including "water-reactive" and "unstable substances. "Unstable" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shock, pressure or temperature. "Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

A "TLV hazardous Substance" means any substance for which the American Conference of Governmental Industrial Hygienists (ACGIH) has set a threshold limit value (TLV) of 10 parts per million (ppm) or less, or 3 mg. per cubic meter or less. The ACGIH periodically publishes recommended workplace exposure levels for chemical substances and physical agents. Any substance having a 10 ppm (or 3 mg/m^3) exposure level (i.e., TLV) may cause an imminent and substantial endangerment to public health if sufficient quantities were released into the environment by a route that would expose people living near a facility.

AGENCY VIEWS

STATEMENT OF LEE M. THOMAS, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you this morning. I am here to honor a pledge I made last year, to submit to you early in the 99th Congress this Administration's proposal to reauthorize the Comprehensive Environmental Response, Compensation, and Liability Act—the Superfund.

This legislation is the product of months of intensive effort on the part of the executive branch. The bill we offer is a consensus document reflecting this Administration's view of one of the most pressing environmental issues facing this Nation, and it has the full backing and support of the President.

I have personally played a leadership role in preparing this package. Implementation of Superfund is the Environmental Protection Agency's highest priority. Its reauthorization is my own top legislative goal. I will work closely with members of this Subcommittee to extend and improve this vital statute.

We have learned a great deal about the problem of uncontrolled hazardous waste sites since the Congress, with your leadership, first enacted Superfund just over four years ago. Much has been accomplished using the authorities of the original law. Based on our first-hand experiences, as well as our vision of the problem that remains, it is time now to renew this program.

Since 1983, we have made substantial progress in implementing the Superfund law. Long-term work is underway at hundreds of sites around the country. At hundreds of others, we have completed emergency cleanups and eliminated immediate threats to human health and the environment.

The charts before you summarize our progress to date. In a moment, I will provide you with a thorough briefing on where we have been under Superfund and where we are going.

Despite our progress, however, much remains to be done. We must take all steps necessary to assure that we do not lose our momentum. The legislation we present today is designed to build upon that momentum. It will allow us to get the cleanup job done as quickly and completely as possible.

Overall, this legislation will give us the tools we need to continue implementing Superfund at the accelerated pace we established during the past two years. Our proposal:

Triples the resources available for cleaning up hazardous waste sites.

Focuses those resources on the most serious problems.

Strengthens our enforcement capabilities and ensures that responsible parties pay for and conduct more cleanups.

Enhances the roles of both Federal and State governments in undertaking response action.

Guarantees a meaningful role for affected citizens in selecting cleanup options.

Assures an adequate, stable, and equitable financial base for the program.

The $5.3 billion program we propose today, coupled with an aggressive enforcement effort, will yield dramatic results during the second five years under Superfund. By the end of fiscal year 1990, we project engineering studies—the first step in the full cleanup of a priority site—will have been started at nearly 1,500 sites. Actual construction will be underway or completed at more than 900 sites. In addition, by the end of fiscal year 1990, emergency cleanup actions at over 1700 sites will have been undertaken.

While I am completely comfortable with the legislation we present today, I will be candid with you. It raises some difficult issues with which Congress must grapple. It recognizes and respects our experiences to date, and suggests statutory changes to allow us to proceed more effectively with the original challenge of Superfund. It modifies the taxing mechanism in an attempt to provide the resources we will need to continue getting the job done.

THE RESPONSE PROGRAM

There can be no doubt that the public recognizes Superfund as government's primary tool for addressing environmental and health threats posed by abandoned hazardous waste sites. Indeed, the legislative history of Superfund centers on "inactive," "uncontrolled," and "orphan" hazardous waste sites.

However, response authorities in the present law are much more sweeping in scope. They have the potential to dilute our scarce Superfund resources among non-site-related releases, situations posing minimal public health threats, and other circumstances.

Our proposal focuses those resources on sites that pose the most serious potential threats: uncontrolled and abandoned hazardous waste sites; municipal and industrial waste disposal facilities; sites regulated under the Resource Conservation and Recovery Act but held by insolvent firms; and spills and other releases of hazardous substances. In addition, the bill permits the President to take action at any site where the release of hazardous substances poses the threat of a major public health or environmental emergency and authorities or capabilities do not exist for response in a timely manner. By focusing our attention, we establish a more concerted effort to clean up what we feel are the most dangerous sites in the nation.

In addition to clarifying the scope of response under Superfund, our proposal would improve and expedite cleanup in several ways. It better defines health-related authorities and the agencies responsible for implementing them. The bill authorizes the establishment of benchmark cleanup standards for short-term and long-term actions. And it provides limited protection for cleanup contractors against claims for future response costs arising out of the work they perform for us.

THE ENFORCEMENT COMPONENT

The enforcement provisions of the bill are critically important to our overall success in carrying out the second phase of Superfund implementation.

Enforcement was a major theme of my confirmation testimony before the Senate last month, and I have continued to be a visible and vocal proponent of aggressive enforcement stances in all EPA programs. Under Superfund, this bill gives us the opportunity to turn our words into substantive tools capable of yielding results.

As we continue to emphasize Superfund enforcement, we are proposing a series of statutory changes in our bill which, taken together, will help ensure that responsible parties play an increasingly important role in cleaning up hazardous waste sites. These changes should be viewed within the context of our continued reliance on the strict, joint and several liability of responsible parties at Superfund sites.

Our bill would:

Increase all criminal penalties to $25,000, all civil penalties to $10,000, and create civil penalties to augment criminal sanctions where they do not already exist.

Expedite civil actions by requiring that separate suits be brought against other potentially liable parties for contribution after judgment or settlement in enforcement actions.

Clarify governmental access and information-gathering powers and establish the authority to enforce them.

Preclude pre-enforcement review of selected response actions while maintaining safeguards against arbitrary and capricious selection of remedies or use of orders.

Impose Federal lines for response costs upon all real property owned by responsible parties affected by an agency response action.

Clearly establish foreign vessel owners' and operators' liability for releases from their vessels.

The above authorities will do a great deal to enhance our enforcement capabilities. This, in turn, will increase our ability to foster responsible party cleanups and to recover costs where site actions are paid for by the fund.

Aggressive enforcement will supplement the cleanup efforts we undertake using the fund. I expect responsible parties, responding to our tough enforcement posture, to sign settlements valued at between $400 million and $500 million during fiscal year 1986. That's three times the level of settlements for fiscal 1984, which was a record year in itself.

Private-party cleanups between 1986 and 1990 are expected to total approximately $2 billion. When coupled with fund-financed activities, this will effectively yield some $7.5 billion in total cleanup activity during that second five-year period.

FEDERAL-STATE RELATIONSHIPS

A strong, clearly defined Federal-State relationship is also essential to the success of our Superfund program. Through carefully crafted administrative steps, we have delegated substantial decision-making authority to the States during the past two years. Our legislative package complements this trend and prescribes a greatly expanded role for the States.

The States would become increasingly active partners in making Superfund work. We offer them the opportunity to play a far more substantive role in managing actual site cleanup for both short- and long-term actions, and to have a more meaningful stake in the program's cost efficiency. We would also add clarifying language to the existing law allowing cooperative agreements between EPA and the States to cover more than one site. Enforcement costs would be included in these agreements.

New language would allow expansion of State programs by putting an end to the current preemption of State superfund-like taxing statutes. States would be permitted to raise revenues dedicated to hazardous waste site cleanup activities without constraint by similar Federal statutes.

We also look for the States to take on a somewhat larger portion of the Surperfund cost burden. We propose that the States pay for 20 percent of the cost of long-term cleanup at sites where the State itself is not a responsible party. This would be an increase from the current 10 percent cost-share. Similarly, we would increase the State share from 50 percent to 75 percent for cleanup at sites where the State is the site operator.

COMMUNITY INVOLVEMENT

Since coming to EPA in early 1983, I have been committed to a meaningful role for affected citizens in Superfund cleanup process decisions. Although the current law does not address this essential element of the cleanup equation, I established a community involvement policy shortly after taking over the hazardous waste program.

That program, and the process of involving citizens in Superfund activities, has helped those citizens affected by our work to understand our decisions. It has also helped us to understand their concerns.

Our proposal would require that affected citizens be notified of proposed cleanup action. They would be given an opportunity to comment on the proposed action and any alternatives. The objective of this amendment is to ensure community involvement in long-term cleanup actions.

One thing I learned first-hand as head of the Superfund program for two years is the deep, genuine concern of citizens for the health of their families, the maintenance of their property values, and the protection of their environment. The public must know that this agency makes its decisions in the light of day, after considering all responsible viewpoints. This amendment will lend greater credibility to our efforts to clean up hazardous waste sites.

FINANCING

In the final analysis, realizing all of the goals we have set for the Superfund program will depend upon an adequate and stable financial base. We believe that a blend of taxes, together with interest on the unexpended fund balance and cost recoveries, will give us the resources we need to accomplish our mission. We feel strongly that the funds used to pay for the program should be generated entirely from these dedicated sources, not from general Treasury revenues.

About 90 percent of the $5.3 billion we project being generated by this mix of revenue sources over the next five years will come from taxes. One-third of these funds will be generated by feedstock taxes, while two-thirds will come from a waste-end tax.

The details of our legislation are set out in the fact sheet and the section-by-section analysis that I have attached to my testimony.

In closing, I want to stress that our legislative proposal is a strong and balanced approach to the hazardous waste site cleanup problem that faces us. This bill will triple the resources available to us for cleanup activities, strengthen our enforcement capabilities to foster private-party cleanups, and focus all activities on those sites posing the greatest risks to human health and the environment.

I am proud to present this legislation to this Subcommittee. The staff of many agencies have worked very hard putting it together. I urge you to consider its provisions carefully in crafting a bill to reauthorize Superfund.

Thank you very much.

SUPERFUND REAUTHORIZATION FACT SHEET

President Reagan transmitted to Congress February 22 the Comprehensive Environmental Response, Compensation and Liability Act Amendments of 1985. The bill would reauthorize Superfund for five years.

SUMMARY OF KEY PROVISIONS

Resources: More than triples funds available for Superfund activities over current law. Existing law established a $1.6 billion trust fund through fiscal year 1985. The proposed reauthorization would generate $5.3 billion between fiscal years 1986 and 1990. Approximately 90 percent of these funds would be raised through a tax on petrochemical feedstocks and the management of all RCRA hazardous wastes (⅓ feedstock; ⅔ waste end).

Scope: The proposed bill would concentrate EPA resources on hazardous waste sites. These are the sites Congress originally intended that Superfund focus on. The response program in the Administration's bill would address abandoned and uncontrolled hazardous waste sites, municipal and industrial waste sites with problems, and sites governed by the Resource Conservation and Recovery Act but held by insolvent companies. In addition, the bill includes a "safety valve" that enables the President to respond to any hazardous substance release that constitutes a major public health or environmental emergency.

Enforcement: The proposed reauthorization contains several major changes in EPA's enforcement program. They are designed to ensure that responsible parties conduct and pay for more cleanups. Key enforcement provisions would:

> Increase all criminal penalties $25,000; all civil penalties would increase to $10,000. New civil penalties would be created to augment criminal sanctions where they do not already exist.
>
> Expedite civil actions by requiring that separate suits be brought against other potentially liable parties for contribution after judgment or settlement in enforcement actions.
>
> Specifically define governmental access and information-gathering powers and establish the authority to enforce them.

Impose federal liens for response costs upon all real property owned by responsible parties affected by an agency response action.

It is expected that these new authorities will significantly supplement fund-financed cleanup activities. In fiscal year 1986, EPA expects responsible parties to conduct cleanup work worth between $400 and $500 million. Through 1990, we expect these cleanups to total some $2 billion, bringing the estimated value of all Superfund activities over the next five years to nearly $7.5 billion.

State Responsibilities: The current law's preemption of state superfund-like taxing statutes would be eliminated. States will be able to raise revenues for their own cleanup activities. The proposal also promotes multi-site cooperative agreements and allows state enforcement costs to be eligible for funding. The states would be required to pay an increasing share of the cost of cleaning up sites. The state matching share for sites where the state is not a responsible party would increase from 10 percent to 20 percent. For sites where the state is the site operator, the state share would increase from 50 percent to 75 percent.

Community Involvement: The proposal would make it a statutory requirement that affected citizens be notified of proposed cleanup actions. They would also be given the opportunity to comment on any proposed action and on alternatives. This amendment applies to all long-term cleanup actions, whether they are fund-financed activities or the result of enforcement action.

Projections: As a result of these provisions, EPA projects that through fiscal year 1990, engineering studies will have begun at over 1,500 sites. Actual construction will be underway or completed at 920 sites. In addition, we will have undertaken emergency cleanup actions at 1,741 sites.

SUPERFUND REVENUES FACT SHEET

In designing a tax to raise revenue for funding the Superfund program, EPA sought to meet the following objectives:

To provide a stable and predictable source of revenue;

To broaden the base from which revenue is received;

To minimize adverse economic impacts on industries;

To impose the tax on the type of industries and practices that have caused the hazardous substance release problems Superfund was designed to address;

To encourage a reduction in the quantities of hazardous waste generated and to discourage the management of hazardous wastes in surface impoundments and landfills.

EPA's proposed amendments to Superfund seek to raise approximately $5.3 billion to finance the program over the next five years (from FY 1986 to FY 1990).

EPA proposes to raise $5.3 billion from three sources:

(1) *Feedstock:* A tax on crude oil and 42 petrochemicals and raw materials used in the production of chemicals that contribute to the hazardous substance release problem addressed by Superfund.

The feedstock tax base and tax rates are the same as the current tax used to finance Superfund since 1980.

This tax is designed to raise approximately $300 million per year over the next five years.

(2) *Waste-management:* Revenues from the management of hazardous wastes. This includes a tax on all hazardous wastes received at a qualified (i.e., RCRA-permitted) treatment, storage, or disposal unit, as well as hazardous wastes disposed of in the ocean or exported from the United States.

The tax would be imposed on the owners or operators of hazardous waste management facilities or vessels, and on exporters of hazardous wastes.

The tax is designed to encourage alternatives to land disposal by imposing a higher rate on the management of wastes in landfills, surface impoundments, waste piles and land treatment units. This provision will complement the 1984 amendments to the Resource Conservation and Recovery Act, which direct EPA to consider restricting certain wastes from land-based units.

This tax is designed to raise approximately $600 million per year over the next five years.

(3) The remaining $100 million per year would be derived from interest on Superfund investments, from fines, and from costs recovered from parties responsible for hazardous substance releases cleaned up by Superfund.

Superfund is currently financed primarily by the feedstock tax identified above in this fact sheet and money from general revenues (12 percent). The current tax, the general revenues, and interest on the fund has raised approximately $1.6 billion to finance Superfund response activities since 1980.

SECTION-BY-SECTION ANALYSIS

EPA'S PROPOSED AMENDMENTS TO CERCLA

Section 1: Short title

The short title of the legislation is the "Comprehensive Environmental Response, Compensation, and Liability Act Amendments of 1985" (CERCLA Amendments).

Section 2: Amendment to CERCLA

This legislation, which reauthorizes the Superfund program from FY 1986 to FY 1990, amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund").

Section 3: Statement of findings and purposes

This section sets forth the findings and purposes of CERCLA. The major findings are that—

> Releases and threats of releases of hazardous substances continue to pose serious threats to public health and the environment;
>
> A major source of the hazardous substance release problem results from releases from uncontrolled hazardous waste facilities; and
>
> To protect human health and the environment, a comprehensive Federal program is needed. The program must include

strengthened enforcement authority, a Federal-State partnership and expanded citizen participation for effective response to hazardous waste sites and releases or threatened releases of hazardous substances.

The objective of this section is to clarify Congressional intent that the focus of the Superfund program should be on responding to releases or threatened releases of hazardous substances from uncontrolled hazardous waste sites.

Section 4: Definitions

Section 101(14) lists those substances which are hazardous under CERCLA by reference to substances listed under five other environmental laws. Section 101(14)(C) includes as hazardous under CERCLA "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. . . .".

This amendment would clarify that a substance need not be a "waste" to be considered a CERCLA hazardous substance under this subsection, so long as the substance meets the criteria of section 3001 of the Solid Waste Disposal Act.

Section 101: Authority to respond

CERCLA section 104(a)(1) currently authorizes response action "unless the President determines that such removal or remedial action will be done properly by the owner or operator of the facility . . . or by any other responsible party." The amendment would clarify and confirm that the President has the discretion to decide when responsible parties are authorized to conduct cleanup in lieu of Fund-financed response.

This amendment is not intended to preclude or discourage responsible parties from conducting cleanup actions without the formal permission of the Federal government. The current requirements of section 105 of CERCLA (National Contingency Plan) contemplated a significant role for private parties in response actions.

The amendment is intended to clarify that the Federal government would not be precluded from conducting a response action, merely because responsible parties have indicated some willingness to take some form of response action. This amendment would confirm that if the Federal government determines that Federal response is needed, the President would have the descretion to determine the appropriate response and to take action; responsible parties would not be authorized to forestall Federal response.

Scope of Program.—The language in the statute authorizes response to the release into the environment of any designated hazardous substance, or pollutant or contaminant which may present a threat to public health, welfare, or the environment.

The amendment would focus Superfund response authority on the problems associated with releases of hazardous substances from uncontrolled hazardous waste sites. Specifically, the amendment would—

Delete "pollutant or contaminant" from the Act;

Delete "welfare" from the phrase "public health, welfare, and the environment" in the Act;

Authorize response whenever there is a release or substantial threat of a release into the environment which may present a "risk" to public health or the environment; and

Prohibit Superfund response from certain categories of releases, unless the President determines that a major public health or environmental emergency exists and that no other person has the authority or capability to respond in a timely manner—

From mining activities covered by SMCRA;

From the lawful application of pesticides registered under FIFRA;

Affecting residential, business, or community structures when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;

Affecting public or private domestic water supply wells when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;

From naturally occurring substances in their unaltered form; and

Covered by and in compliance with a permit, issued under other federal environmental laws.

The effect of the amendment would be to ensure that Superfund responses are focused on those releases of hazardous substances which present the greatest threat to public health and the environment, and to enhance EPA's ability to effectively manage the program.

Section 102: Statutory limits on removals

Section 104(c)(1) of CERCLA limits removal actions to six months in duration and $1 million in cost unless certain waiver criteria are met. These criteria include: a finding that continued action is necessary to prevent or mitigate the emergency and to protect public health and the environment, and that assistance would not otherwise be provided on a timely basis. Because of the limits established in this provision, some removals have been scaled-down below the level needed to achieve a cost-effective response.

This amendment would provide an additional and independent criterion for waiving the statutory limits on removal actions and increase the six months duration limitation to one year. The new criterion would permit removals to exceed the $1 million cost and one year duration limitations if the response action is "appropriate and consistent with a permanent remedy." The amendment would ensure that removals accomplish a more complete response, if such response is appropriate in that situation.

The primary effect of the amendment would be to enhance the President's ability to choose the most effective response in removal situations. Generally, the amendment would allow, where appropriate, the first operable units of remedial actions to be considered removals. This would provide the Agency with increased flexibility to quickly initiate the appropriate removal. This ability to implement a response quickly would enhance efforts to contain the migration of hazardous substances. In turn, this would result in increased public health and environmental protection and may be less costly since hazardous substances could be contained before they migrate to a much larger area requiring greater response.

Section 103: Permanent remedies

Section 104(c)(4) of CERCLA requires the selection of an appropriate remedial action that is consistent with the National Contingency Plan (NCP) and is cost-effective in light of concerns about protecting public health and the environment, considerations of Fund-balancing, and the need for immediate action. There is no explicit requirement that the selection of a remedial action take into consideration permanent solutions or alternative treatment technologies.

EPA currently considers the long-term effectiveness and the permanence of alternatives in its selection of the appropriate remedial action. This amendment would provide explicit Congressional approval of EPA's position and would allow revision of the NCP to implement this approach to permanent remedies.

Section 104: Offsite remedial action

Section 101(24) of CERCLA, which defines "remedy or remedial action" provides that additional threshold criteria must be met before the President may undertake *off-site* disposal of hazardous substances. This creates a bias against off-site disposal and reflects past Congressional and EPA emphasis on on-site land disposal as the preferred remedial action.

The objective of the amendment is to eliminate the statutory bias for on-site remedies by making the statute neutral with regard to on-site or off-site remedies.

Congress, as reflected in the 1984 amendments to the Resource Conservation and Recovery Act, and EPA have come to recognize the value of treatment and other alternative technologies.

The primary effect of this amendment would be to reduce the proliferation of sites requiring monitoring in perpetuity (by consolidating wastes from many sites into one larger and closely monitored facility), by recognizing the value of permanent off-site remedies, such as treatment.

Section 105: National Contingency Plan (NCP)

This amendment would (1) eliminate the requirement that the NCP include at least 400 facilities, and (2) clarify that States are allowed only one highest priority designation for the life of the list.

The deletion of the phrase "at least 400 facilities" would allow the Agency to select and place on the National Priorities List, only those facilities which present "the greatest danger to public health or welfare or the environment."

The second part of the amendment would be a Congressional ratification of EPA's present policy which is to permit the States to make only one highest priority designation. This policy is reflected in the most recent proposed revisions to the NCP.

These amendments allow the President to effectively limit the NPL to only those facilities which pose significant problems to public health or the environment as determined through Agency regulation.

Section 106: Cooperative agreements

The amendment would explicitly permit contracts and cooperative agreements to cover more than one facility, as is current EPA policy, and clarifies and confirms that response includes enforcement activities associated with a remedial or removal action. The objective of the amendment is to facilitate State response activities by permitting States to enter into agreements covering more than one site, and by providing Fund money for response actions, including enforcement activities.

The primary effect of the amendment would be to increase State participation in response and enforcement activities. This would increase the overall pace and effectiveness of the Superfund program.

Section 107: Publicly operated facilities

Section 104(c)(3) of CERCLA requires States to pay at least 50 percent of response costs for hazardous substance releases from facilities owned by the State or political subdivision thereof at the time the release occurred.

The amendment would change the 50 percent State cost share to 75 percent and impose the 75 percent or greater cost-share only at those facilities operated directly or indirectly by the State or political subdivision. The test for imposing the 75 percent or greater cost-share would be related to operation rather than ownership of the facility at the time of disposal of hazardous substances. The cost-share under this amendment would apply to sites owned and operated by the State; sites owned by the State and operated by a private party under a contract or lease with the State; and sites owned by a private party but operated by the State. The objective of the amendment is to impose the cost-share on States only in those cases where the State is involved in the operation of the facility, either directly or indirectly.

This amendment would also clarify that for purposes of this amendment only that the term facility will not include navigable waters or the beds underlying those waters, and thus a 75 percent cost share would not be imposed on States for response actions at such facilities.

Section 108: Siting of hazardous waste facilities

Section 104(c)(3) of CERCLA requires that States assure the availability of hazardous waste disposal facilities for off-site remedial actions that are in compliance with subtitle C of RCRA. States are not, however, required to nor provided incentives for creating or expanding existing capacity for managing wastes, or otherwise provide for future treatment and disposal of hazardous wastes. In order to maintain an aggressive Superfund program, it is essential to ensure that States have adequate waste disposal capabilities.

This amendment would provide initiatives to States to create and expand capacity for managing wastes within the State by prohibiting the use of Fund money for response actions, in those States that do not assure the availability of hazardous waste disposal capacity sufficient to handle that State's needs during a period of time to be specified by regulation. The amendment would be effective two years after enactment.

There would be limited exceptions to this prohibition. First, the amendment would permit Fund expenditures for alternative drinking water or for temporary relocation of affected individuals for their homes for up to one year. Second, Fund money could be used to finance a response action in a State that does not provide the above assurance if the President determines that a major public health or environmental emergency exists.

Any response action taken where the State fails to assure the availability of sufficient offsite capacity would be subject to a higher cost share.

The amendment would also require States to pay any additional costs associated with transporting wastes outside the State's boundaries (or outside the region, if the State has entered into a regional agreement for hazardous waste treatment and disposal) in addition to the cost of the remedy. This clause would be effective upon enactment.

The objective of the amendment is to create an economic incentive for States to expand existing or create new long-term in-state capacity to manage hazardous wastes.

Section 109: Community involvement

CERCLA does not presently address the role of community involvement in response actions. Existing federal policy does, however, provide for an active community role as expressed in existing program guidance and the proposed revisions to the National Contingency Plan.

This amendment would require public notification and an opportunity for public comment on the proposed action. The primary objective of the amendment is to ensure community involvement in remedial actions taken pursuant to this Act, including Fund-finance and enforcement actions.

Because the President has already incorporated the requirements set forth in this amendment in operating guidance, the amendment itself would not impose new responsibilities on the federal government.

The amendment confirms the President's commitment to community involvement in the Superfund program.

Section 110: Health-related authorities

Section 104(i) of CERCLA establishes the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR, in cooperation with EPA and other Federal agencies, is authorized to implement the health related authorities of the Act. These authorities include the establishment and maintenance of: a national registry of diseases and illnesses associated with and persons exposed to hazardous substances, and a data base on the health effects of hazardous substances. CERCLA does not clearly define specific roles and responsibilities of ATSDR and EPA in implementing these and other health related authorities.

The amendment would clarify that the primary purpose of health related activities is to support response actions through health assessments, consultations, and other technical assistance relating to the health effects of exposure to hazardous substances, and to improve the ability to render future public health recommendations through expanding the existing body of scientific knowledge.

In addition, the amendment would clarify existing roles and responsibilities of ATSDR and EPA in conducting various health related activities. Specifically, the amendments would authorize EPA as well as State and local officials to request that ATSDR provide health consultations, assessments, and other assistance to determine the health effects of exposure to hazardous substances. ATSDR may provide such assistance. The President would also be authorized to conduct exposure and risk assessments at sites where a release has occurred.

The amendment would not significantly affect current health related activities but it merely provides a statutory basis for current roles and responsibilities undertaken by ATSDR and EPA.

Section 111: Compliance with other environmental laws

This amendment would authorize the President to specify in the National contingency Plan (NCP) the extent to which remedial and removal actions selected under section 104 or selected under section 106 should comply with applicable or relevant standards and criteria establishment under other Federal, State or local environmental and public health laws. The amendment would specify the factors the President must consider in making this determination; these include: the level of health or environmental protection provided by the standard; the technical feasibility of achieving the standard; the interim or permanent nature of the response; the need for expedient action; and the need to preserve funds to respond to other releases.

The objective of the amendment is to clarify and confirm the President's authority to determine when response actions should comply with other Federal, State, or local laws, which is set forth in existing EPA policy. This amendment confirms that because of the unique statutory provisions of CERCLA, and requirements for response action that strict compliance with other statutory provisions is often not appropriate or necessary.

Section 112: Actions under the National Contingency Plan

Section 107(d) of CERCLA exempts persons from liability for damages resulting from actions taken or omitted in responding to hazardous substance releases.

This amendment would add that persons (e.g., EPA contractors and others) conducting response actions in accordance with the NCP or at the direction of an on-scene coordinator are also exempt from liability for future response costs. This means that, for example, contractors would not be held liable for additional response costs at a site if another response action is taken at a site where the contractor already conducted a previous action (if a second response action was taken because the first response was not sufficient to address the problem), unless the original action was negligent or intentionally misconducted.

The primary effect of the amendment would be to limit contractor liability for future response costs. The amendment would not affect third party liability claims. Nor would the amendment affect the liability of persons liable or potentially liable under section 107(a) who undertake a response action under this act.

Section 113: Natural resource damage claims

The amendment would clarify existing language about the responsibilities of Federal and State natural resources trustees. In general, the Federal or State trustee would perform assessments of damage to resources under its jurisdiction, except that Federal trustees may perform assessments on behalf of States and may be reimbursed by States for performing the assessments. Neither Federal not State trustees would be required to use the damage assessment regulations being prepared by the Department of the Interior, but if they used the Department of the Interior regulation the assessment would be entitled to a presumption of validity.

The amendment would also eliminate use of the Fund to pay trustees for damage to natural resources. Accordingly, all references to natural resource damage claims against the Fund would be deleted from the Act. The ability of Federal and State trustees to recover damages from responsible parties under section 107 would not be diminished.

Finally, Federal agencies with custody and accountability for specific Federal facilities would be the sole trustee of natural resources on, under, or above such facilities for purposes of CERCLA.

Section 114: Response claims

Section 111 of CERCLA authorizes parties who conduct response actions to assert claims against the Fund to recover necessary response costs incurred in carrying out the National Contingency Plan. The procedures to be followed in presenting and processing these claims against the Fund are set forth in section 112. This amendment would clarify and streamline the process for response claims.

The amendment would make the following changes:

Clarify authority to preauthorize response claims;

Eliminate provisions for negotiations with responsible parties;

Substitute an administrative hearing process for claims adjustments and arbitration; and

Clarify time frames for reviews of claims.

The availability of response claims can expedite private party cleanup. Following preauthorization for all or portions of the cleanup, private parties can promptly conduct cleanup action, and bring claims to the Fund when the response action is completed.

CERCLA currently prescribes five steps at a minimum in the process from initial presentation of the claim to the responsible party to final payment of an award. Where administrative review and judicial appeal are involved the process may take as many as eight steps before the claimant receives final payment of an award.

The amendments to this section would streamline the claims procedure. First, section 111 would be amended to clarify the authority of the Agency to preauthorize response claims. Preauthorization can be used to assure that response actions are conducted properly, and that they are limited to available funds.

Second, the provisions for negotiations with responsible parties prior to payment of claims would be eliminated. Such negotiations as are needed would be conducted prior to preauthorization.

Third, an administrative hearing process would be substituted for the arbitration procedure presently provided for in the statute. The arbitration procedure is a vestige of certain economic damage claims which were not enacted in 1980. In that the claims procedures will involve only reimbursement of costs, there is no reason for claims to be arbitrated.

Response costs, are not particularly appropriate for consideration by a panel of arbitrators.

Fourth, certain ambiguities in the timeframes for Presidential action would be clarified.

Section 115: Indian tribes

CERCLA is presently silent regarding the status of tribal governments and Indian lands. Current CERCLA policy, however, recognizes tribal governments as independent sovereigns with authority and responsibility over reservation roughly analogous to that of State governments. This means that tribal governments are subject to various notification, consultation, health related activity, and financial and disposal capacity assurance requirements.

The proposed amendment would clarify the role of States, Indian tribes, and the Federal government for facilities on Indian lands. It defines Indian lands to include only those where there is some type of trust responsibility or restriction against alienation.

Subsection (a) would add two new definitions, "Indian tribe" and "Indian lands." Both definitions are tied to the United States trust responsibility. Not all Federally recognized Indian tribes would be included in the CERCLA definition; only those tribes for which land is held in trust.

Section (b) would set forth the procedure for remedial action on Indian lands. Indian tribes would be required to provide the assurances specified in section 104(c)(3) for sites on Indian lands. If the Secretary of the Interior finds that a tribe cannot provide these assurances, the Department of the Interior may provide them on behalf of the tribe. States would not be required to provide assurance for sites wholly on Indian lands.

The amendment authorizes the President to enter into agreements with Indian tribes to carry out response actions under section 104 and the National Contingency Plan and to enforce these agreements. Indian tribes would be reimbursed from the Fund for reasonable response costs.

Also, Indian tribes would be notified by the National Response Center of releases that affect Indian lands.

Section 116: Preemption

Section 114(c) of CERCLA preempts States from requiring persons to contribute to any fund designed to provide compensation for claims for response costs or damages which may be compensated under CERCLA. The provision is not clear and it has been argued that the intent of this provision is to preempt States from imposing State taxes to finance certain CERCLA and non-CERCLA action.

The amendment would delete the section which preempts States from imposing taxes for purposes already covered by CERCLA. The objective of the amendment is to ensure that States may impose taxes to meet Superfund cost-share requirements, and to foster State cleanup at sites not covered by CERCLA.

The primary effect of the amendment would be to remove a potential barrier to the creation of State superfund programs. The amendment may result in an increase in the number and pace of hazardous substance response actions undertaken or partially funded by States since States would be able to raise funds to assist such hazardous substance response.

Section 117: State cost-share

Section 104(c)(3)(C)(i) of CERCLA requires States to pay ten percent of costs for remedial actions at privately owned facilities.

This amendment would alter the existing Federal-State cost-share to require States to pay 20 percent of the remedial action costs at privately owned sites. The cost-share for State or political subdivision sites would be 75 percent (see section 106 of this Act).

The objective of this amendment is to reduce the existing burden on the Federal government for financing remedial response actions by requiring the States to pay a larger share of costs at privately owned sites. The amendment is consistent with an overall goal of these amendments in increasing the role of the States in conducting response actions.

TITLE II—PROVISIONS RELATING PRIMARILY TO ENFORCEMENT

Section 201: Civil penalties for nonreporting

Section 103(a) of CERCLA requires any person in charge of a vessel or facilitiy to notify the National Response Center as soon as the person in charge has knowledge of any release of a hazardous substance in an amount that equals or exceeds the reportable quantity established under section 102. These notifications serve as one basis for the Federal government to determine whether response action is appropriate for the release.

The existing statute provides only criminal penalties for failure to report. This amendment would increase the criminal penalty to $25,000 and provide additional enforcement flexibility by allowing the imposition of a civil penalty of up to $10,000 per violation.

The amendment would enable the Administrator to assess civil penalties aggregating less than $25,000 for such violations; penalties aggregating more than $25,000 may be recovered by the Attorney General through a civil action.

Civil penalties for violations of notification requirements have several advantages.

First, civil penalties may be imposed in situations where the violations do not merit the sanctions associated with criminal violations.

Second, when the Federal government takes an enforcement action to compel private party cleanup action for such a release, the Federal government may now also seek penalties for violations of the notification provision in the cleanup enforcement action.

Section 202: Contribution and parties to litigation

This amendment would change section 107 of CERCLA to provide a greater degree of finality to settlements reached with responsible parties, and to expedite private party cleanup by simplifying the litigation process in imminent hazard and cost recovery actions.

This amendment would clarify and confirm existing law governing liability of potentially responsible parties in three respects:

Parties found liable under section 106 or 107 would have a right of contribution, allowing them to sue other be liable or potentially liable parties to recover a portion of the costs paid;

Parties who reach a judicially approved good faith settlement with the government would not be liable for the contribution claims of other liable parties; and

Where a civil or administrative action is underway, contribution actions could be brought only after a judgment is entered or a settlement in good faith is reached.

The first provision should help to encourage private party settlements and cleanups. Parties who settle or who pay judgments as a result of litigation, could attempt to recover some portion of their loss in subsquent contribution litigation from parties who were not sued in the enforcement action. Private parties may be more willing to assume the financial responsibility for cleanup if they are assured that they can seek contribution from others.

The second provision would help bring an increased measure of finality to settlements. Responsible parties who have entered into a judicially approved good faith settlement under the Act would be protected from paying any additional portion of costs to other responsible parties in a contribution action.

The third provision would allow more expeditious management of litigation. Hazardous waste sites often involve dozens or even hundreds of potentially responsible parties with differing types and degrees of involvement in the facility. While the government may sue all potentially responsible parties, it need not sue all these parties. It may instead sue a limited number of parties to secure complete cleanup or all costs of cleanup under the theory of joint and several liability. In some instances these parties have in turn sued other potentially responsible parties in the same judicial action. In several cases this has resulted in massive and potentially unmanageable litigation.

The amendment would clarify that if an enforcement action is underway, claims for contribution of indemnification could not be brought until a judgment or settlement is reached. This change would allow the government to limit the number of parties in its actions, so that litigation could be conducted in a more efficient and expeditious fashion.

Section 203: Access and information gathering

Section 104(e) of CERCLA clearly authorizes the Agency to request information concerning the treatment, storage, disposal or handling of hazardous substances, and to enter premises where hazardous substances were generated, stored, treated, disposed, or transported. This amendment would clarify and confirm the President's right to access and information concerning the release or threatened release of hazardous substance by making explicit the original intent of Congress when CERCLA was enacted in 1980.

Currently, there is no explicit authority to enforce information requests under CERCLA. In addition, there is no explicit language to compel parties to provide access to the site or adjacent areas. Access to the site is obviously needed to conduct a response action. The President may also need access to adjacent areas to conduct sampling or move equipment.

While landowners generally will provide access voluntarily, explicit statutory authority would encourage private parties to consent to access and information requests, and would provide explicit mechanisms for the President to obtain access and information when such requests are reasonable but refused.

This amendment would also establish procedures for the President to issue orders for access and information. The President would notify potential recipients of orders and provide an opportunity for consultation. The President could also seek to have the Federal courts enjoin interference with access and direct private parties to comply with orders. This provision would enable the government to seek judicial relief so that necessary response actions would not be unduly delayed.

Section 204: Administration orders for section 104(b) actions

CERCLA section 104(b) currently authorizes the President to conduct a variety of investigations, studies, and information gathering activities. Under this section, remedial investigation and feasibility studies (RI/FSs) are performed to serve as the basis for Choosing the appropriate extent of remedy.

In some circumstances, it may be appropriate to allow potentially responsible parties to conduct RI/FSs or other investigations or studies. This approach would free up government resources to address other sites, and would increase the likelihood that private parties would assume responsibilities for cleanup of the site. Such private-party RI/FSs are most effective when they are performed pursuant to an administrative order that clearly sets out the responsibilities of the private parties.

This amendment to CERCLA would provide for administrative orders on consent without the need for any findings by the President with regard to potential hazard at the facility, to allow the planning and investigative stages of response actions to proceed more expeditiously. The order would be enforceable in district courts, and the court could issue a civil penalty for noncompliance.

It should be noted that EPA retains the authority to choose the appropriate remedy, based on a Record of Decision developed by EPA. This amendment would not authorize orders on consent for actual cleanup activities under section 104.

This section would also include a technical amendment to section 107 of CERCLA. Section 107 currently provides for treble damages from any person who is liable for a release or threat of release and who fails without sufficient cause to comply with an order under section 104. The penalties established for violations of administrative orders for access under section 203 of this Act, and orders on consent for private party studies and investigations, are sufficient incentives to assure compliance. Accordingly, the reference to treble damages for violations of section 104 orders would be removed. This would not change the President's authority to seek treble damages for violations of orders under section 106.

Section 205: Non-trust fund and pre-trust fund expenditures

This amendment would clarify and confirm that CERCLA establishes liability for costs incurred by the United States in response to a release or threatened release of a hazardous substance from a treatment, storage or disposal facility where the response was after passage of the Resource Conservation and Recovery Act of 1976 and the party knew or should have known of the response action. Such costs must not have been inconsistent with remedial or removal actions under CERCLA.

The United States has incurred substantial response costs in connection with responses at hazardous waste facilities occurring after enactment of RCRA that are wholly consistent with CERCLA's goals and authorities. Where the person knew or should have known of the Federal response action, but did not act to clean up the release, it is entirely appropriate and consistent with CERCLA to clarify and confirm that responsible parties are liable for such response costs.

Section 206: Statute of limitations

CERCLA currently includes not explicit statute of limitations for the filing of cost recovery actions under section 107. Nevertheless, the Federal government recognizes the need for filing of cost recovery actions in a timely fashion, to assure that evidence concerning liability and response costs in fresh, to help replenish the Fund, and to provide some measure of finality to affected responsible parties. The absence of an explicit statute of limitations has also led to some uncertainly concerning whether the existence of such a statute of limitations should be assumed under Federal law.

This amendment would eliminate this uncertainty by establishing a six-year statute of limitations for the filing of cost recovery actions. The six-year statute of limitations is the same as the period established by a clear line of cases involving the parallel provisions in section 311 of the Clean Water Act. Because response actions may extend for a number of years, the government is not precluded from commencing an action for recovery of costs at any time after such costs have been incurred.

For purposes of this section, the response action is regarded as completed upon completion of any operation and maintenance activities funded by the Federal government.

In addition, this amendment would provide a three-year statute of limitations: for damage actions, running from the date of discovery of the loss; for contribution actions, running from entry of judgment or the date of settlement; and for rights subrogated pursuant to a claim paid from the Fund, from the date of payment of such claim.

Section 207: Pre-enforcement review

The purpose of this amendment is to clarify the process for judicial review of government decisions on the appropriate extent of remedy and liability of responsible parties. This section establishes that:

Review of all Presidential decisions concerning remedy is on the administrative record;

There is no pre-enforcement review of section 106 administrative orders; and

Administrative orders are subject to judicial review once response action is completed.

(a) Record Review:

While CERCLA does not explicitly state how decisions on remedies will be judicially reviewed, the Federal government has taken the position and certain courts have suggested that review of decisions concerning remedy, like most administrative decisions, are on the basis of the administrative record. This amendment would clarify and confirm that judicial review of the response action is limited to the administrative record and that the action shall be upheld unless it is arbitrary, capricious, or otherwise not in accordance with law. Reliance on an administrative record helps assure that the basis for the response decision is clearly articulated and open to the scrutiny by the public and responsible parties.

Limiting judicial review of response actions to the administrative record also expedites the process of review and ensures that the reviewing court's attention is focused on the information and criteria used in selecting the remedy.

(b) Pre-Enforcement Review:

Section 106 orders may be subject to judicial review at the time the government acts to enforce the order and collect penalties for non-compliance. This amendment would clarify and confirm that orders are not subject to judicial review prior to that time.

The clarification reflects the fact that pre-enforcement review would be a significant obstacle to the use of administrative orders. It is likely that pre-enforcement review would lead to considerable delay in providing cleanups, increase response costs and discourage settlements and voluntary cleanups.

(c) Review of Orders:

The changes discussed above clarify and confirm the existing process. Section 208(c) would amend section 106 to establish new procedures for reimbursement of certain response costs and to provide for judicial review of administrative orders once the response action required by the order is completed.

Under the amendment, responsible parties can request reimbursement from the Fund for costs incurred in responding to an order. If the President refuses to grant all or part of a petition for reimbursement, responsible parties may file an action in district court seeking reimbursement. Responsible parties can obtain reimbursement if they can show that:

They are not liable, and that the costs which they incurred in responding to the order were reasonable; or

The response action ordered by the President was arbitrary and capricious or otherwise not in accordance with law.

This provision is intended to foster complaince with orders and expeditious cleanup, allowing potentially responsible parties to preserve their positions concerning liability and the appropriateness of the response action, in circumstances where they agree to undertake the cleanup. Under the record review provisions discussed above, responsible parties would also have opportunities for input into the decision making process for choosing the appropriate response action.

Section 208: Nationwide service of process

Rule 4(f) of the Federal Rules of Civil Procedure limits effective service of process to the territorial limits of the State in which the district court is held, unless a Federal statute provides otherwise. Difficulties have arisen in obtaining personal jurisdiction over certain defendants in actions by the United States under CERCLA. This amendment would remove these difficulties by providing that the United States may serve a defendant in any district where he resides, transacts business, or may otherwise be found.

Section 209: Abatement action

This amendment would delete the references to "welfare" in section 106 of CERCLA. Consequently, enforcement or abatement action could only be taken when the President determines that there may be an imminent and substantial endangerment to the public health or the environment because of an actual or threatened release of a hazardous substance for a facility. This amendment focuses CERCLA enforcement efforts on public health and the environment.

Section 210: Federal lien

This amendment would enable the United States to recover at least some of its response costs through an *in rem* action against the real property that is the subject of the response action. Such protection for the United States would also enable it to recover the increase in land value resulting from the response action, thus preventing unjust enrichment of the property owner.

The amendment would provide that all costs and damages for which a person is liable to the United States under section 107(a) shall be a lien on all real property affected by the response action. The lien would arise at the time the United States first incurs response costs, but would not be perfected as against purchasers, security interest holders, and judgment lien creditors (all as defined in the tax lien statute, 26 U.S.C. § 6321 et seq.) until notice of the lien has been recorded or filed. The notice provision would not apply with respect to any person who knew or should have known that the United States had incurred response costs.

Section 211: Penalties

This amendment would increase criminal penalties in section 103(d)(2) of CERCLA for destruction of records from $20,000 to $25,000. Civil penalties under section 106(b) of CERCLA for violation of a 106 order would be increased from $5,000 to $10,000 per day. These increases in penalties are intended to significantly strengthen existing incentives for compliance with CERCLA provisions.

Section 212: Federal agency settlement

The existing section 107(g) of CERCLA makes Federal agencies liable for response costs and natural resource damages from releases of hazardous substances in the same manner as a private entity. This may be the basis for legitimate claims which should be paid by the United States without resort to litigation. However, CERCLA currently neither confers authority nor specifies procedures for administrative payment of such claims.

This amendment provides procedures for administrative settlement of CERCLA claims. The language is modeled closely after a similar provision in the Federal Tort Claims Act, 10 U.S.C. § 2672. Under the amendment, Federal agencies are authorized to settle claims for $25,000 or less in accordance with Justice Department procedures, and to arrive at tentative settlements for Justice Department approval for amounts over $25,000.

Section 213: Foreign vessel liability

This amendment would delete from CERCLA a clause that had the unintended effect of excluding from liability under section 107 all foreign vessels not under United States jurisdiction, even when such vessels release hazardous substances in areas otherwise subject to the United States jurisdiction.

TITLE III—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

Title II of CERCLA amended the Internal Revenue Code of 1954, establishing the Hazardous Substance Response Trust Fund (Fund). The Fund is comprised primarily of revenue derived from excise taxes on certain petrochemicals and inorganic raw materials, as well as on domestic crude oil and imported petroleum products (87%) and appropriations from the General Fund (12%). Revenues in the Fund are used to finance Superfund response and support activities.

The present CERCLA tax scheme is referred to as a "feedstock tax" because it imposes a tax on the basic chemical building blocks of chemical products. The hazardous substances and wastes associated with the problems addressed by CERCLA are byproducts of production processes that use these raw materials.

The Fund was designed to contain approximately $1.6 billion from FY 1981 through FY 1985. Current authorization to impose taxes to finance the program expires September 30, 1985. This amendment is needed to authorize the imposition of taxes to finance Superfund response actions over the next five years.

The tax structure set forth in these amendments has been designed to meet the following objectives:

To provide a stable and predictable source of revenue;

To broaden the tax base from which contributions are received;

To minimize adverse economic impacts on taxed industries; and

To focus the tax on the type of industries and practices that have caused the problems that are addressed by Superfund.

The amendment would authorize a Fund of approximately $1 billion per year, or roughly $5.3 billion from FY 1986 through FY

1990. This represents the level of funding that can be effectively managed over the next five years and raised without significant adverse effects on tax paying firms.

The amendment would establish a Fund with revenue derived primarily from three sources.

The first source of revenue would be derived from a feedstock tax. This tax would be imposed on crude oil and petroleum products as well as the 42 chemical feedstocks taxed under the present statute. The tax rates imposed on these feedstocks would remain the same as the rates established in 1980: approximately $4.87 per ton for petrochemical feedstocks, approximately $4.45 per ton for inorganic raw materials (with adjustments for elemental equivalency), and 0.79 cents per barrel for crude oil and petroleum producs. This feedstock tax would maintain the current CERCLA exemptions on methane or butane used as fuel, substances used in the production of fertilizers, sulfuric acid produced as a byproduct of air pollution control, substances derived from coal, and taxable chemicals made from previously taxed taxable chemicals. The feedstock tax has been designed to raise approximately $300 million per year.

The second source of revenue would be derived from a waste-management tax. This tax would be imposed on the receipt of hazardous wastes at a qualified treatment, storage, or disposal unit (i.e. a unit permitted under the Resource Conservation and Recovery Act (RCRA)), as well as on hazardous wastes disposed of in the ocean or exported from the United States. The tax liability would be imposed on the owner or operator of a qualified hazardous waste management facility, the owner or operator of a vessel that disposes of wastes into or over the ocean, and the exporter of hazardous wastes.

The tax rates imposed under the waste-management tax would increase each year of the tax, and would be higher for landfills, surface impoundments, waste piles, and land treatment units. The following amount per wet-weight ton would be imposed:

Fiscal year:	[1] *Rate per ton*
1986	$9.80
1987	10.09
1988	11.13
1989	13.48
1990	16.32

[1] Beginning in 1987, the tax rates would be adjusted annually to compensate for any shortfalls in projected revenues. If necessary to meet revenue targets, the tax may be extended from October 1, 1990, through March 31, 1991, at the same rates applicable in Fiscal Year 1990.

For waste exported from the United States, disposed into or over the ocean, or received at a qualified harzardous waste management unit other than specified above, the following amount per wet-weight ton would be imposed:

Fiscal year:	[1] *Rate per ton*
1986	$2.61
1987	2.68
1988	2.96
1989	3.59
1990	4.37

[1] Beginning in 1987, the tax rates would be adjusted annually to compensate for any shortfalls in projected revenues. If necessary to meet revenue targets, the tax may be extended from October 1, 1990, through March 31, 1991, at the same rates applicable in Fiscal Year 1990.

Wastes managed in units not subject to permits under subtitle C of RCRA (e.g. wastes stored in tanks and containers for less than 90 days), wastes from CERCLA response actions, and wastes generated by Federal facilities would not be subject to the waste-management tax. Additionally, a credit would be given for taxes already paid on wastes that are transferred from one taxable unit to another. If the units involved in the transfer have different applicable tax rates, the credit would be based on the lower rate.

The waste-management tax has been designed to raise approximately $600 million per year.

The third source of revenue would be derived from interest on Superfund investments, fines, costs recovered from parties responsible for response actions financed from the Fund, and intra-fund transfers. This portion of the Fund would raise approximately $100 million per year.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401: Applicability of amendments

This amendment would add a new section to CERCLA providing that the amendments relating to sections 104(a) and (b), which limit response authority under CERCLA, would not affect sites listed on the NPL prior to January 1, 1985.

The effect of the amendment would be that sites listed as final on the NPL prior to January 1, 1985 would not be affected by the amendments to sections 104(A) and (b). Sites which remain proposed for inclusion on the NPL may be affected by the amendments. In other words, sites which remain proposed that do not pertain to releases from uncontrolled hazardous waste sites or are specifically excluded from Superfund response (e.g., mining wastes covered by SMCRA or sites contaminated solely as a result of the lawful application of pesticides) would not be eligible for Superfund response, because they did not become final NPL sites by January 1, 1985.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

AN ACT To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. *(a)* IN GENERAL.—For purpose of this title, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency *except as provided in subsection (b);*

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution

Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases (F) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency) including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issue pursuant to the Atomic Energy Act of 1954;

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act [or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act];

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this

Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, [or] any foreign government, *any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe;*

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, and person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment *(including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutants or contaminants),* but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing

or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provied for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare of the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances **[**or**]** *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or inceration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilites where the **[**President**]** *Administrator* determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or **[**welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials**]**; *welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;*

(25) "respond" or "response" means remove, removal, remedy, **[**and**]** remedial action, *and enforcement activities related thereto;*

(26) "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the

ordinary operating convenience of a common or contract carrier and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guan, American Samoa, the United States, Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction:

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act;

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; and

(32) "liable" and "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(b) USE OF TERM "ADMINISTRATOR".—

(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority had been retained by the President), the term "Administrator" refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department agency or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term "Administrator" when used in this Act refers to the Administrator of the Environmental Protection Agency.

(3) ATSDR.—When used in section 116 of this Act, the term "Administrator" means the Administrator of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmental Protection Agency as specified in section 116.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare of the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. *The Administrator shall promulgate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.*

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected States.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title

who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than [$10,000 or imprisoned for not more than one year, or both] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.* Notification received pursuant to this [paragraph] *subsection* or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, However,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidential to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility,

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or un-

readable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined [not more than $20,000, or imprisoned for not more than one year, or both.] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.*

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

Sec. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the [President] *Administrator* is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the [President] *Administrator* deems necessary to protect the public health or welfare or the environment [, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible part]. *The Administrator shall give primary attention to those releases which he deems may present a public health threat.*

(2) For the purpose of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(3) Removal Action.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.

(4) Response by Potentially Responsible Persons.—The Administrator is authorized to provide for response action by potentially responsible persons in accordance with section 122.

(b) Whenever the [President] *Administrator* is authorized to act pursuant to subsection (a) of this section, or whenever the [President] *Administrator* has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the [President] *Administrator* may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(c)(1) Unless (A) the [President] *Administrator* finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the [President] *Administrator* has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken* obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after [$1,000,000] *$2,000,000* has been obligated for response actions or [six months] *12 months* has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) the [President] *Administrator* shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The [President] *Administrator* shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the [President] *Administrator* providing assurances deemed adequate by the [President] *Administrator* that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the [President] *Administrator*; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the [President] *Administrator* and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the [President] *Administrator* may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned *and operated* at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. [The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific

release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.] *The Administrator shall grant the State a credit against the share of the costs for which it is responsible under this paragraph in accordance with subsection (j).*

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(4) STATE CREDITS.

(A) CERTAIN OUT-OF-POCKET EXPENSES.—The Administrator shall treat the expenses described in this subsection as a credit against the share of the costs for which a State is responsible under paragraph (3). The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds.

(B) BASIC CREDIT.—In the case of any facility listed on the National Priorities List under the National Contingency Plan, the credit shall include amounts expended by a State for remedial action at the facility if such amounts are expended pursuant to a contract or cooperative agreement with the Administrator.

(C) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit shall include expense for remedial action at a facility before the listing of the facility on the National Priorities List (NPL) or before a contract or cooperative agreement is entered into under subsection (d) for the facility. No such credit shall be allowed unless the Administrator determines that such expenses would have been credited to the State under subparagraph (b) had the expenditures been made after listing of the facility on the NPL after the date on which such contract or cooperative agreement was entered into.

(D) ADMINISTRATIVE EXPENSES.—The credit shall include funds expended or obligated by the State or political subdivision for administration of provisions under this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

(E) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit shall include funds expended or obligated by the State or a political subdivison thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

(F) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative

agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this subsection.

(G) Item-by-item approval.—In the case of expenditures made after the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this subsection.

(H) Use of credits.—Credits granted under this subsection may only be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions (and future maintenance thereof) at facilities in that State. A credit shall not entitle the State to any direct payment.

(5) Section of Remedial Action.—The Administrator shall select the remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).

(6) Operation and Maintenance.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.

[(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(d) Cooperative Agreements With States.—

(1) In general.—

(A) State applications.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

(B) Terms and conditions.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(2) If the [President] *Administrator* enters into a cost-sharing agreement pursuant to subsection (c) of this section or a

contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the [President] *Administrator* may, after provising sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the [President] *Administrator,* the [President] *Administrator* is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the [President] *Administrator,* may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e) INFORMATION GATHERING AND ACCESS.—

(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a facility, establishment, place, or property, or, in the case of paragraph (3) or (4), at any facili-

ty, establishment, place, property, or location which is adjacent to the establishment, place, property, or location referred to in those paragraphs. Any duly designated officer, employee, or representative of a State under a contract or cooperative agreement is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at such facility, establishment, place, property, or location. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

(2) ACCESS TO INFORMATION.—Any officer, employee, or representative referred to in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter—

(A) The identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall (i) grant any such officer, employee, or representative access at all reasonable times to any facility, establishment, place, or property to inspect or copy all documents or records relating to such matters, or (ii) copy and furnish to the officer, employee, or representative all such documents or records, at the option of such person.

(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following—

(A) Any establishment or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

(B) Any establishment or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any establishment or other place or property where such release is or may be threatened.

(D) Any establishment or other place or property where entry is needed to determine the need for response of the appropriate response or to effectuate a response action under this title.

(4) INSPECTION AND SAMPLES.—

(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any establishment or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contami-

nant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders.—

(A) Issuance.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions—

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

(7) Clearance.—Notwithstanding this subsection entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.

[(2)**]** *(8) Confidentiality of information.*—(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the [President] *Administrator*) shall be available to the public, except that upon a showing satisfactory to the [President] *Administrator* (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the [President] *Administrator* (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the [President] *Administrator* may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the [President] *Administrator* (or any representative of the [President] *Administrator*) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.

(f) In awarding contracts to any person engaged in response actions, the [President] *Administrator* or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All labors and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The [President] *Administrator* shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the [President] *Administrator* may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the [President] *Administrator* shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

[(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.]

(i) Cleanup Schedules.—

(1) Evaluation.—Within 3 years after the enactment of this subsection, or the date of placement on the Emergency Response and Remedial Investigation System (ERRIS) list, whichever is

later, all facilities listed on ERRIS shall be evaluated, in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(2) COMMENCEMENT OF RIFS.—The Administrator shall insure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule—

(A) 150 of such facilities within 12 months after the date of enactment of this subsection.

(B) 325 of such facilities within 24 months after such date of enactment.

(C) An additional 200 facilities within each year thereafter.

(3) COMPLETION OF RIFS.—The Administrator shall ensure completion of remedial investigations and feasibility studies (RIFS) for no fewer than 600 facilities on the National Priorities List within the 5-year period which commences September 1, 1985. The Administrator shall submit an annual report to the Congress at the end of each year during such 5-year period specifying the RIFS which have been completed during that year.

(4) COMMENCEMENT OF REMEDIAL ACTION. —Within 12 months after completion of Remedial Investigations and Feasibility Studies (RIFS), the administrator shall ensure commencement of remedial action at no fewer than 90 percent of the facilities for which completed RIFS have determined that such remedial action is necessary.

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a) REVISION AND REPUBLICATION.*—Within one hundred and eighty days after the enactment of this Act, the **[**President**]** *Administrator* shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the the [President] *Administrator* taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, *the contamination or potential contamination of the ambient air which is associated with the release or threatened release.* State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the [President] *Administrator* shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the [President] *Administrator* priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the [President] *Administrator* shall consider any priorities established by the States. To the extent practicable, [at least four hundred of] the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets" and, to the extent practicable, shall include among the one hundred highest priority facilities [at least] one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. *A State shall be allowed to designate its highest priority facility only once.* Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The [President] *Administrator* may, from time to time, revise and republish the national contingency plan.

(b) Petition for Assessment of Release.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

ABATEMENT ACTION

Sec. 106. (a) In addition to any other action taken by a State or local government, when the [President] *Administrator* determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The [President] *Administrator* may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b)*(1)* Any person [who willfully] *who, without sufficient cause, willfully* violates, or fails or refuses to comply with, any order of the [President] *Administrator* under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$25,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with section 2412 (a) and (d) of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages.

(F) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other exiting statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for corrdinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, another imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

(d) PESTICIDES. The Administrator shall not take action under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provison of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defense set forth in subsection (b) of this section—

(1) the owner and operator of a vessel **[**(otherwise subject to the jurisdiction of the United States)**]** or a facility,

(2) any person who at the time of disposal of any hazardous substance owner or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for dispoasl or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan *and all costs incurred by the United States Government or a State under section 104(b)*;

(B) any other necessary costs of response incurred by any other persons consistent with the national contingency plan; **[**and**]**

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release**[**.**]** *; and*

(D) the costs of any health effects assessment or study carried out under such section 116; and

(E) all other costs incurred by the United States Government before the enactment of the Comprehensive Environmental Compensation and Liability Act of 1980 and subsequent to the enactment of the Resource Conservation and Recovery Act of 1976, in response to a release or threatened release of a hazardous substance from a facility used for the storage, treatment, or disposal of hazardous substances, where such person knew or should have known of the re-

sponse action and the costs are not inconsistent with the response actions provided for in subsections 101(23) and (24) of this Act.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (E). Such interest shall accrue from 90 days after the date on which the United States files an action for recovery of such amounts. The rate of interest on the outstanding unpaid balance of the amounts recoverable under paragraph (2) shall be the same rate as is applicalbe under paragraph (2) shall be the same rate as is applicable to investments of the Fund under section 223(b) of this Act. For purposes of applying section 223(b) in the case of interest on amounts recoverable under paragraph (2), the term "comparable maturity" shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous subtance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, which ever is greater;

(B) for any other vessel, $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the **[**President**]** *Administrator* shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the **[**President**]** *Administrator* pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The **[**President**]** *Administrator* is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection be deposited in the Fund.

(d) *(1) Rendering Care or Advice.*—No person shall be liable under this title for *costs and* damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. *This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently unertakes a response action.* This subsection shall not preclude liability for *costs and* damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(2) Governmental Response to Emergency.—No Federal, State, or local government agency shall be liable under this title for costs or damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a facility or site owned by another person. This paragraph shall not affect the

liability of any Federal, State or local government agency for negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) *(1) Natural Resources Liability.*—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically indentified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The [President,] *Administrator,* or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) Designation of Federal and State Officials.—

(A) Federal.—The Administrator shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

(B) State.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the

Clean Water Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

[(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity, including liability under this section.]

(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies see, section 119 of this Act.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provisions of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damges resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

[(k)(1) The liability established by this section or any other law for the owner or opeator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

[(A) such facility and the owner and operator thereof has complied with the requirements of substitle C of the Solid

Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

[(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

[(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notified the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

[(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

[(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

[(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibilty for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

[(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

[(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.]

(k) Federal Lien.—

(1) In General.—All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration.—The lien imposed by ths subsection shall rise at the time costs are first incurred by the United States with respect to a response action under this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) Notice and Validity.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the approprite office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice

of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954. This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or had occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any persons recover all costs and damages for which such person is liable under subsection (a) of this section.

FINANCIAL RESPONSIBILITY

SEC. 108. (a)(1) The owner or operator of each vessel (except a non-self propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the [President,] *Administrator,* evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the [President] *Administrator* that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the [President] *Administrator* that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the [President] *Administrator* shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the [President] *Administrator* shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the [President] *Administrator* determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the [President] *Administrator* in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgements, and voluntary claims satisfaction. To the maximum extent practicable, the [President] *Administrator* shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.*

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the [President] *Administrator* believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.]

(c) Direct Action in Case of Bankruptcy, Etc.—In any case where a person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or where with reasonable diligence jurisdiction in the Federal Courts cannot be obtained over a person liable under section 107 likely to be solvent at the time of judgment, any claim authorized by section 107 or 111 may be asserted directly against the guarantor providing evidence of financial responsibility for that person. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of Guarantor Liability.—

(1) Total liability.—The total liability under this Act of any guarantor for a facility shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

(2) Other liability.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.

[PENALTY] *penalties*

Sec. 109. *(a) Failure to Comply with Section 108.*—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed [$10,000] *$25,000* for each day of violation.

(b) False or Misleading Information.—

(1) Criminal penalty.—Any person who submits in any notice required under section 103 any information which he knows to be false or misleading shall be imprisoned for not more three

years or fined in accordance with section 3571 of title 18 of the United States Code (or section 3623 of title 18 if applicable), or both.

(2) Civil Penalty.—Any person who submits in any notice required under section 103 any false or misleading information shall be subject to a civil penalty of not more than $25,000 for each during which such violation continues unless such information is corrected within 30 days after the date of such submission.

(c) Assessment and Collection of Civil Penalties.—Any civil penalty under this Act shall be assessed and collected in the same manner, and subject to the same provisioins, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of such, a penalty the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any empoyee or any authorized representative of employees by reason of the fact that such employee or representative has provide information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or this agent) deliberately violates any requirement of this Act.

(e) The **[**President**]** *Administrator* shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such employee, may request the **[**President**]** *Administrator* to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the **[**President**]** *Administrator* shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendation as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the **[**President**]** *Administrator* or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) *IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under section 221 not more than $1,750,000,000 for each of the 5 fiscal years commencing with October 1, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved.)* The **[**President**]** *Administrator* shall use the money in the Fund for following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such cost must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; [and]

(4) payment of costs specified under subsection (c) of this section; *and*

(5) the cost of grants under section 117(e) (relating to grants to citizens for technical assistance).

The [President] *Administrator* shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title[; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the exent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.].

(c) Uses of the Fund under subsection (a) of this section include—

[(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

[(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;]

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of [epidemiologic studies] *epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles,* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; **[**and**]**

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessment hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees**[**.**]**; and

(7) cost incurred by the administrator in evaluating facilities pursuant to petitions under section 105(b);

(8) the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party of parties; and

(9) the costs of carrying out the research and training program under section 116(s), to the extent that such costs do not exceed the following amounts—

(A) For the fiscal year 1986, $3,000,000.
(B) For the fiscal year 1987, $10,000,000.
(C) For the fiscal year 1988, $25,000,000.
(D) For the fiscal year 1989, $35,000,000.
(E) For the fiscal year 1990, $40,000,000.

As used in paragraph (4), the term "health assessment" shall have the meaning provided by section 116(f)(7).

[(d)(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

[(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or less resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.**]**

(e)(1) Claims against or presented to the Fund *pursuant to subsectoin 111(a)(2)* shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the [President] *Administrator* shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only *(A)* for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section *and (B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).*

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The [President] *Administrator* is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The [President] *Administrator* is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The [President] *Administrator* shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the [President] *Administrator* shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

[(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and sections 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and sections 301(f)(5) of the Federal Water Pollution Control Act.

[(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and sections 301(f) (4) and (5) of the Federal Water Pollution

Control Act shall have the force and effect of a rebuttable presumption on behalf of a claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

[(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.]

[(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

[(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administerd and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.]

(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following—

(1) AUDIT.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this subtitle and an examination of remedial investigations and feasibility studies prepared for remedial actions.

(2) STATUS REPORT.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison

to remedial and enforcement actions undertaken in prior fiscal years.

(3) ESTIMATE.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance ws released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for the United States claimants.

(m) GENERAL REVENUE SHARE OF SUPERFUND.—

(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

(A) For fiscal year 1986, $250,000,000.
(B) For fiscal year 1987, $250,000,000.
(C) For fiscal year 1988, $250,000,000.
(D) For fiscal year 1989, $250,000,000.
(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.

(n) Agency for Toxic Substances and Disease Registry.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Trust Fund.

(o) Tax on Imported Substances.—(1) The amount authorized to be appropriated for any fiscal year under subsection (m) for deposit into the Hazardous Substances Superfund shall be reduced by the revenues estimated to be received during such year from a tax described in paragraph (2).

(2) A tax is described in this paragraph only if—

(A) the tax is designed to generate revenues of $140,000,000 for each of the 5 fiscal years after fiscal year 1985.

(B) the tax is imposed on the sale by the importer of any substanced which is directly or substantially manufactured or produced from materials or feedstocks consisting of 1 or more taxable chemicals (as defined in section 4662(a) of the Internal Revenue Code of 1954), and

(C) the amount of the tax is the amount of the tax which would have been imposed by section 4661 of such Code on the taxable chemicals (as so defined) used as raw materials or feedstocks in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such substance.

If the importer does not furnish sufficient information to determine under subparagraph (C) the amount of tax imposed on any substance, the tax is described in this paragraph only if the amount of the tax imposed on such substance is 10 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(3) Such a tax should take effect on January 1, 1986.

CLAIMS PROCEDURE

Sec. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisifed within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person to present the claim to the Fund for payment.

(b)(1) The **[**President**]** *Administrator* shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined **[**up to $5,000 or imprisoned for not more than one year, or both.**]** *in ac-*

cordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both.

(2)(A) Upon receipt of any claim, the [President] *Administrator* shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and building upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the [President] *Administrator* shall attempt to arrange settlement of any claim against the Fund. The [President] *Administrator* is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the [President] *Administrator* shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the [President] *Administrator* that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the [President.] *Administrator*

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the [President] *Administrator* may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the [President] *Administrator* may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagrap (G) of paragraph (4) of this subsection. If the [President] *Administrator* declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the [President] *Administrator* shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the [President] *Administrator* may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the [President] *Administrator* or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the [President] *Administrator* determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the [President] *Administrator.* If a person fails or refuses to obey a subpena, the [President] *Administrator* may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the [President] *Administrator* in writing to undertake such activities pursuant to section 104(b) of this title. The [President] *Administrator* shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the [President] *Administrator* decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the [President] *Administrator* reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the [President] *Administrator* attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the [President] *Administrator* extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the [President] *Administrator* shall pay any such award from the Fund. The [President] *Administrator* shall determine the method, terms, and time of payment.

(I) If at any time the [President] *Administrator* determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the [President] *Administrator* the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

[(d) claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

(d) Statute of Limitations.—

(1) Claims for recovery of costs.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) 6 years after the date of completion of all response action.

(2) Minors and incompetents.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incomponent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURSIDICTION AND VENUE

Sec. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in [subsection] *subsections,* (a) *and (i)* of this section, the United States district courts shall have exclusive original jurisdiction over all controveries arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District Columbia.

(c) The provisions of subsection (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(f) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(g) CONTRIBUTION.—

(1) CONTRIBUTION.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable to potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

(2) SETTLEMENT.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

(3) PERSONS NOT PARTIES TO SETTLEMENT.—Nothing in this subsection shall affect or modify in any way the rights of—

(A) the United States,

(B) a State, or

(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,

to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2). Any contribution action brought under this subsection shall be governed by Federal law. In any such action under this subsection for contribution the rights of a State and person referred to in subparagraph (C) shall be subordinated to the rights of the United States.

(h) STATUTE OF LIMITATIONS.—

(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following—

(A) The date of the discovery of the loss.

(B) The date on which regulations are promulgated under section 301(c).

(2) ACTIONS FOR RECOVERY OF COSTS.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

(5) Minors and imcompetents.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(i) Timing of Review.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a), in any action other than one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

(4) An action under section 310 of this Act alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remeidal action is to be undertaken at the site.

(5) An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which a potentially responsible person has made a commitment to undertake a remedial investigation and feasibility study and to implement the remedial action decision of the Administrator following review.

(j) Administrative Record.—

(1) Limitation.—In any judicial action under section 106 or 197, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record.

(2) Standards.—In considering such objections, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in

accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

(4) Procedural errors.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Participation procedures.—

(1) Regulations.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, such regulations shall include procedures for providing each of the following, before adoption of any plan for remedial aciton to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—

(A) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(B) A reasonable opportunity to comment and provide information regarding the plan.

(C) An opportunity for a public meeting in the affected area.

(D) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures.

(E) Agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenus for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.]

(c) STATE FUNDS.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.

(d) Except as provided in this title, no owner or opreator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirments of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The [President] *Administrator* is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an Administrator, to be known as the Agency for Toxic Substances and Disease Registry (ATSDR). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

(b) DUTIES.—The Administrator of the ATSDR shall, with the cooperation of—

(1) the Administrator of the Environmental Protection Agency,

(2) the Commissioner of the Food and Drug Administration,

(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

(4) the Administrator of the Occupational Safety and Health Administration, and

(5) the Administrator of the Social Security Administration, effectuate and implement the health-related authorities of this Act.

(c) LIST OF RESTRICTED AREAS.—In cooperation with the States and other agencies of the Federal Government, the Administrator of the ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances or pollutants or contaminants.

(d) LIST OF SUBSTANCES.—

(1) INITIAL 100.—The Administrator of the Environmental Protection Agency, in consultation with the Administrator of

ATSDR but within 6 months after enactment of this section, shall prepare a list of at least 100 hazardous substances or pollutants or contaminants which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priority List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

(2) Revision.—Within 24 months after the enactment of this section, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall revise the list prepared under paragraph (1). Such revision shall include the addition of 100 or more such hazardous substances or pollutants or contaminants. The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall not less often than once every year thereafter revise such list based upon new information concerning the potential for human exposure to hazardous substances, pollutants, or contaminants at locations specified in paragraph (1) and their known or suspected toxicity to humans.

(e) Information on Health Effects.—

(1) Literature, studies, etc.—The Administrator of ASTDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance or pollutant or contaminant listed pursuant to subsection (d).

(2) Toxicological profiles.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances or pollutants or contaminants under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed jointly by the Administrator of the Environmental Protecton Agency and the Administrator of ATSDR. Such profiles shall include, but not be limited to—

(A) the examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance or pollutant or contaminant in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects; and

(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health or acute, subacute, and chronic health effects.

The profiles required to be conducted under this paragraph for those hazardous substances or pollutants or contaminants listed in paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within 4 years after the enactment of this section. Additional profiles required on substances listed pursuant to this paragraph shall be completed at a rate of no less than 25 per year. Profiles required under this paragraph shall be re-

vised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(3) HEALTH EFFECTS RESEARCH.—For any hazardous substance or pollutant or contaminant for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research designed to determine the health effects of such hazardous substance or pollutant or contaminant. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance or pollutant or contaminant in combination with other hazardous substances or pollutants or contaminants with which it is commonly found.

(4) COORDINATION.—In the development and implementation of any research program under this subsection, the Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances or pollutants or contaminants listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of the Environmental Protection Agency and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(f) HEALTH ASSESSMENTS.—

(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priority List (NPL) established under section 105 which meets each of the following criteria:

(A) the presence of a hazardous substance or pollutant or contaminant has been confirmed at the facility.

(B) Pathways of human exposure to hazardous substances or pollutants and contaminants have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances or pollutants or contaminants.

(C) There exists a significant possibility that a human population has been exposed to hazardous substances or pollutants or contaminants through the identified pathways and there may exist a significant threat of current or future adverse health effects of or the population so exposed.

The determination of whether any facility on the NPL meets such criteria shall be based on information provided by the Administrator of the Environmental Protection Agency regarding such criteria. Nothing in this paragraph shall preclude the Administrator of the ATSDR from performing, where appropriate and consistent with the National Continency Plan, health assessments of releases of hazardous substances or pollutants or *contaminants from any other facilities, including facilities which are not listed on the NPL. The Administrator of the Environmental Protection Agency or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate the performance of health assessments under this section.*

(2) PETITION TO ADMINISTRATOR OF EPA.—Any individual or group of individuals may submit a petition to the Administrator of the Environmental Protection Agency to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator shall take action under paragraph (3)(A) if the Administrator determines that there is a reasonable likelihood that a hazardous substance is from one of the following facilities and that there is a reasonable likelihood that the exposure may present a significant risk to human health:

(A) A facility where such substance is (or was in the past) treated, stored, recycled, or dispose of, on a regular basis.

(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

(3) INITIATION OR EXPLANATION REQUIRED.—Within 45 days after receipt of a petition under paragraph (2), the administrator of the Environmental Protection Agency (or the Administrator of the Agency for Toxic Substances and Disease Registry if designated by the Administrator of the Environmental Protection Agency) shall do one of the following:

(A) Initiate a health assessment.

(B) Publish a written explanation of one of the following:

(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

(ii) A determination that there is not a reasonable likelihood that the exposure presents a signficant risk to human health.

(iii) A determination that the evidence submitted or information available to the Environmental Protection Agency is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure presents a significant risk to human health. If the Administrator determines under this clause that the evidence submitted is not adequate, the Administrator shall, in the written explanation, identify the additional information necessary for the Administrator to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within 6 months after the date on which the health assessment is initiated.

(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances or pollutants or contaminants, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7).

(5) RIFS.—Where a health assessment is done at an NPL site, the Administrator of the ATSDR shall, to the maximum extent practicable, complete health assessments before the completion of the remedial investigation and feasibility study at the facility concerned.

(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment shall report the results of the assessment to the Administrator of ATSDR and the administrator of the Environmental Protection Agency and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall include the same recommendation in any report on the results of any assessment carried out directly by the ATSDR, and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term "health assessment" means a determination of the potential individual and population human health risks posed by individual facilities. A health assessment shall be based on but not limited to the following information.

(A) The nature and extent of contamination.

(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

(C) The size and potential susceptibility of the community within the likely pathways of exposure.

(D) The comparison of measured or estimated human exposure levels which are indentified for hazardous substances or pollutants or contaminants and any exposure levels for such hazardous substances or pollutants or contaminants which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

(E) The comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.

An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of the ATSDR shall utilize appropriate data available from the Administrator of the Environmental Protection Agency to avoid duplication of effort.

(8) Purpose.—The purpose of such health assessments shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to hazardous substances or pollutants or contaminants from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of such health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances or pollutants or contaminants including known point or nonpoint sources other than those from the facility in question.

(9) Results and recommendations.—At the completion of each health assessment the Administrator of ATSDR shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure.

(10) Recovery of costs.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance or pollutant or contaminant from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

(g) Studies.—

(1) Pilot studies.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(2) Full scale.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances or pollutants or contaminants from a release or suspected release.

(h) Registry.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall

evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

(1) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances or pollutants or contaminants; or

(2) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances or pollutants or contaminants.

(i) Health Surveillance Program.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances or pollutants or contaminants based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(j) Report Every 2 Years.—Two years after the enactment of this subsection and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of the Environmental Protection Agency, the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works a report on the results on the Agency's activities regarding—

(1) health assessments conducted;

(2) epidemiologic studies conducted;

(3) hazardous substances or pollutants or contaminants which have been listed under subsection (d), toxicologic profiles which have been developed and toxicologic testing which has been conducted or which is being conducted under subsection (e);

(4) registeries established under subsection (h); and

(5) an overall assessment, based on the results of activities conducted by the Administrator of the ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances or pollutants or contaminants due to releses from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

(k) Reduction of Exposure.—

(1) Significant human exposure level.—If a health assessment, other study, or evaluation carried out under this Act

identifies an individual or individuals exposed to a hazardous substance or pollutant or contaminant in a manner which presents a significant risk to human health, the Administrator of the Environmental Protection Agency shall take such steps as may be necessary to abate this risk. Such steps may include the following:

(A) Provision of alternate household water supplies.

(B) Temporary or permanent relocation of individuals.

(2) INSUFFICIENT INFORMATION.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator of the Environmental Protection Agency to determine a significant human exposure level with respect to a hazardous substance or pollutant or contaminant, the Administrator of the Environmental Protection Agency may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance or pollutant or contaminant to such level as the Administrator of the Environmental Protection Agency deems necessary to protect the human health.

(l) NO DELAY OF OTHER ACTION.—In the case of any hazardous substance or pollutant or contaminant which is subject to a petition under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator of the Environmental Protection Agency to exercise any authority vested in the Administrator of that Agency under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

(m) PEER REVIEW.—All studies and results of research conducted under this section (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the ATSDR.

(n) EDUCATIONAL MATERIALS.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances or pollutants or contaminants (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

(o) DIRECT ACTION AND COOPERATIVE AGREEMENTS.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of the ATSDR established by subsection (a), either directly or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of the ATSDR determines are

capable of carrying out such activities. Such activities shall include provision or consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(p) ADEQUATE PERSONNEL.—The President shall provide for the employment of an adequate number of officers and employees in the ATSDR, based upon the amount made available to such agency for each fiscal year and taking into account the recommendations of such agency.

(q) FEDERAL FACILITIES.—In accordance with section 107(g), the Administrator of the ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of the ATSDR shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances. Nothing in this subsection shall be construed to create an entitlement program.

(s) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services, in consultation with the Administrator of the Environmental Protection Agency may conduct and support the following (through grants, cooperative agreements, and contracts)—

(A) Research (including epidemiologic and ecologic studies and development and demonstration programs) in the following—

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation.

(iv) Site specific demonstrations of innovative technologies applied to all phases of hazardous substances response including, as appropriate, the testing, evaluation, and field demonstration of innovative technologies, processes, equipment, and related devices which can be used for such purposes. Such activities may be conducted at National Priorities List Site.

(v) Improved safety practices in, and equipment for the handling and disposal of hazardous substances.

(B) Training for the following—

(i) For employees who handle hazardous substances, training in the procedures for the handling and removal of hazardous substances.

(ii) For State and local health and environment agency personnel, training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities.

(C) Advanced training in the fields enumerated in subparagraph (A), including ecology, environmental health, chemical engineering, and molecular biology.

(2) The Director of NIEHS shall cooperate fully with those agencies specified in paragraph (5)(A)–(F) in carrying out the purposes of this section.

(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with the following—

(A) Generators of hazardous wastes.

(B) Persons involved in the development of innovative technologies, processes, equipment, and related devices, which can be used to control, contain, and treat hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences who shall follow the procedures applicable to grants and contracts under title IV of the Public Health Service Act.

(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection, the Secretary shall appoint an advisory council which shall consist of the following—

(A) The Assistant Administrator of the Environmental Protection Agency for the Office of Research and Development who shall serve as chairman.

(B) The Assistant Administrator of the Environmental Protection Agency for Hazardous Waste and Environmental Response.

(C) The Director for the Center for Environmental Health in the Centers for Disease Control.

(D) The Director of the National Institute for Occupational Safety and Health.

(E) The Director of the National Cancer Institute.

(F) The Administrator of the ATSDR.

(G) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

(H) A representative of the toxic chemical waste producing industry.

(I) A representative of entities engaged in the management of toxic chemical wastes.

(J) Three representatives of institutions of higher education (one from the field of medicine, one from the field of

chemical engineering, and one from the field of biological sciences).

(K) Two representatives from State and local health or environmental agencies.

(L) One representative from community based organizations concerned with hazardous substances.

(M) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

(6) PLANNING.—Within one year after the date of the enactment of this subsection the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The plan shall also include consideration of the development and evaluation of clean-up technologies to meet the standards set under section 121. The advisory council appointed under paragraph (4) shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordinating among those agencies specified in subparagraphs (A) through (G) of paragraph (5).

SEC. 117. PUBLIC PARTICIPATION.

(a) PROPOSED PLAN.—Before adoption of any plan for remedical action to be underaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate shall take both of the following actions—

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan, if any remedial action is taken, if any enforcement action under section 106 is taken, or if any settlement or consent decree under section 106 is entered into and if such, settlement, or decree differs in any significant respects from the final plan, the

Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

(d) Publication.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.

(e) Grants for Technical Assistance.—

(1) Authority.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess date and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

(2) Amount.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 1/5 of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the 1/5 contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this paragraph with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

(a) Scope of Program.—The Administrator shall not respond under this Act to any of the following—

(1) A release or threat of a release of a hazardous substance or pollutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

(3) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

(4) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant in any *form if he determines, in his discretion, that the release of threat of release constitutes a major public health or environmental emergency. As used in this subsection, the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.*

(b) High Priority for Wells and Certain Aquifers.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

(C) Determination To Use Offsite Remedial Action.—Whenever any remedial action is undertaken under section 104 (or any action is undertaken under section 106), in determining whether or not to utilize offsite transport and offsite storage, treatment, destruction, or secure disposition, the Administrator shall take each of the following into account—

(1) The long-term uncertainties associated with land disposal.

(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(4) Short- and long-term potential for adverse health effects from human exposure.

(5) The long-term maintenance costs of alternative remedial actions.

(6) The risks associated with excavation, transportation, and disposal.

SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) Liability of Response Action Contractors.—

(1) In general.—Notwithstanding the provisions of section 114, no person who is a response action contractor with respect to any release or threatened release of a hazardous substance or a pollutant or contaminant from a facility shall be liable under this title, under any other Federal law, under the law of any state or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.—Paragraph (1) shall not apply in the case of a release that was caused by conduct of the response action contractor which was negligent reckless, or intentional misconduct.

(3) Persons retained or hired.—Any person retained or hired by a response action contractor to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor.

(b) Savings Provisions.—

(1) LIABILITY OF OTHER PERSONS.—Nothing in this subsection shall affect the liability under this Act or under any other authority of Federal or State law of any person other than a response action contractor.

(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing the liability under this title.

(C) EXCEPTION TO EXEMPTION.—The exemption provided under subsection (a) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if he had not carried out any actions referred to in subsection (d) of this section.

(d) DEFINITION.—For purposes of this section, a person is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility if such person is carrying out a written contract or agreement with—

(1) the Administrator;

(2) any other Federal agency;

(3) a State; or

(4) any potentially responsible party, as defined by section 122;

to provide any response action under this Act or to provide any evaluation, planning, engineering, design, construction, equipment, or any ancillary services thereto for such facility.

(e) COMPETITION.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services shall be selected in accordance with title IX of the Federal Property and Administrative Servicess Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under Memoranda of Understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors.

SEC. 120. FEDERAL FACILITIES.

(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act.

(2) APPLICATION OF GUIDELINES, ETC., TO FEDERAL FACILITIES.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out

under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, Applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or uitilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List.

(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of that Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

(1) ESTABLISHMENT.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States which shall contain each of the following—

(A) The inventory required to be submitted by that department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of that Act.

(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasnable times. The Administrator shall establish a program to provide information

to the public with respect to facilities which are included in the Docket under this subsection.

(3) PERIODIC NOTICES.—6 months after establishment of the Docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the Docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the Docket.

(d) EVALUATION.—

(1) DEADLINE.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the Docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State the Administrator shall make such an evaluation of any facility included in the Docket.

(2) DEADLINE FOR INCLUSION.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

(e) REQUIRED ACTION BY DEPARTMENT.—

(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List (NPL), the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study (RIFS) for such facility. In the case of any facility which is listed on the NPL before that date of enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a RIFS for such facility within 1 year after such date of enactment.

(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each RIFS conducted as provided in paragraph (1). Within 180 days thereafter the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the RIFS. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan

for remedical action and the adoption of such an agreement shall be treated as the adoption of a final plan.

(3) Contents of agreement.—Each interagency agreement under this subsection shall include, but shall not be limited to each of the following—

(A) A review of alternative remedial actions and selection of a remedial action plan, including construction design by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

The concurrence of the State in which the facility is located shall be required for the selection of the remedial action to be carried out at that facility.

(4) Annual report.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to each of the following items—

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement;

(C) A report on progress in conducting RIFS.

(D) A report on progress in conducting remedial actions.

(f) Transfer of Authorities.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the Administrator or otherwise, to any other officer or employee of the United States or to any other person.

(g) Property Transferred by Federal Agencies.—

(1) Notice.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was disposed of or stored for one year or more, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage or disposal took place.

(2) Form of notice; regulations.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) CONTENTS OF CERTAIN DEEDS.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was disposed of or stored for one year or more, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain a notice of the type and quantity of such hazardous substances, notice of the time at which such disposal or storage took place, and a description of remedial action taken, if any.

(h) OBLIGATIONS UNDER SOLID WASTE ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

(i) STATE COORDINATOR.—A State may request and be granted by the Administrator the role of on-scene coordinator for federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.

SEC. 121. CLEANUP STANDARDS.

(a) DUTY OF ADMINISTRATOR.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. Such actions shall be in accordance with the National Contingency Plan and shall be in accordance with the requirements of this section.

(b) LEVEL OR STANDARD OF CONTROL.—Any remedial action selected under section 104 or secured under section 106 for a facility at which a release or threatened release occurs shall require that level or standard of control of each hazardous substance or pollutant or contaminant at that facility which is necessary to protect human health and environment.

(c) SELECTION OF REMEDIAL ACTION.—In selecting a remedial action under section 104 or to be secured under section 106, the Administrator shall evaluate alternatives which achieve the requirements of subsection (b) and shall assess the cost-effectiveness of such alternatives. In making such assessment, the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following—

(1) The long-term uncertainties associated with land disposal.

(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

(5) Short- and long-term potential for adverse health effects from human exposure.

(6) Long-term maintenance costs.

Following an evaluation under this subsection, the Administrator shall select that cost-effective remedial action which, to the maximum extent practicable, utilizes such permanent solutions and alternative treatment technologies or resource recovery technologies.

(d) Onsite Remedial Action.—

(1) In general.—This subsection shall apply only to hazardous substances or pollutants or contaminants which remain onsite. If any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act is applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant, any remedial action selected under section 104 or section 106 shall require a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such standard. In requiring a level or standard of control for such hazardous substance or pollutant or contaminant the Administrator shall consider any water quality criteria under the Federal Water Pollution Control Act Which is applicable to that hazardous substance or pollutant or contaminant.

(2) Contamination from other sources.—The level or standard of control required in accordance with this section shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

(e) Offsite Remedial Action.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the facility is operating in compliance with such sections and only if the Administrator determines that the facility is not releasing hazardous waste or constituents thereof into the groundwater or that any such release is being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act. As used in this subsection, (1) the term "land disposal" has the meaning provided by section 3004 of the Solid Waste Disposal Act and (2) the term "hazardous waste" means hazardous waste listed or identified under section 3001 of that Act.

(f) Waivers.—The Administrator may waive the application of the requirements of subsection (d) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings—

(1) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment and is substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

(2) The Administrator finds that compliance with the requirements of subsection (d) at that facility will result in greater risk to human health or the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

(3) The Administrator finds that compliance with the requirements is technically impracticable from an engineering perspective.

(4) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

(5) The Administrator finds that the response action is an interim measure prior to final remedial action at the facility.

A finding under this subsection may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

"(g) Permits for Onsite Cleanup.—

(1) Federal.—No permit shall be required under Federal law for any response action undertaken by any person under section 104 or 106 at any facility to the extent that such action does not invovle the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to anothr facility

(2) State.—No permit shall be required under State or lcoal law for any response action undertaken under section 104 or 106 at the facility at which the release or threatened release occured. In selecting response action under this Act for such release or threatened release, the administrator shall consider any more stringent State standards relating to the level or standard for control for the hazardous substance or pollutant or contaminant concerned and any State law regarding the siting of facilities used at the site of such response action. If the Administrator selects a response action which is not consistent with a more stringent State standard, the Administrator shall publish an explanation of the reasons for such decision. Following such publication, if the State determines that a more stringent State standard should be applicable to the response action and enters into an agreement with the Administrator to pay the additional costs attributable to compliance with the more stringent standard, the Administrator shall require the response action to conform to the more stringent State standard. The Administrator shall determine the amount of any additional costs which are attributable to compliance with the more stringent State stand-

ard in lieu of the standard which the Administrator would otherwise select. If any State pays any additional costs of complying with a State standard or requirement, the State may recover such costs from responsible parties pursuant to section 107.

(3) Offsite.—Nothing in this subsection shall be construed to affect any requirement of Federal, State, or local law to the extent such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

(4) Federal facilities.—Nothing in this subsection shall apply to any action undertaken pursuant to this Act at a facility which is owned or operated by a department, agency, or instrumentality of the United States. Nothing in this subsection or in any other provision of this Act shall preempt or otherwise affect the application of any Federal, State, or local law, including any permit requirement, to any response action undertaken at such a facility.

(5) State environmental impact requirements.—Prior to commencement of a Remedial Investigation and Feasibility Study (RIFS), the Adminsitrator shall notify the State of such action. If within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of RIFS which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be compliance with such State environmental impact statutes. This subsection shall take effect upon enactment of this section.

(h) Destruction of Dioxin Wastes.—

(1) Treatment technology—With respect to remedial actions involving hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(C) Protection against emissions of hazardous substances, pollutants, or contaminants into the air during normal operation and equivalent protection during nonsteady operations including start-up, shutdown, and power failures.

(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

(2) Requirements.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

(B) there will be no human exposure to the hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans.

(i) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(j) VALUE ENGINEERING REVIEW.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances, pollutants, or contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term value engineering review means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

SEC. 122. SETTLEMENTS.

(a) EPA AUTHORITY TO ENTER INTO AGREEMENTS.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the vacility or vessel from which a release or substantial threat or release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person.

(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

(1) MIXED FUNDING.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

(2) REVIEWABILITY.—The Administrator's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

(3) RETENTION OF FUNDS.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(c) EFFECT OF AGREEMENT.—

(1) LIMITATION OF LIABILITY.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement. Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any limitation on liability contained in an agreement under this section.

(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following—

(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

(d) ENFORCEMENT.

(1) CLEANUP AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or welfare or the environment. The entry of any such decree shall not be construed to be an acknowledgement by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment.

(2) 104(b) AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

(e) SPECIAL NOTICE PROCEDURES.—

(1) NOTICE.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following—

(A) The identity of other notice recipients.

(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

(2) NEGOTIATION.—

(A) MORATORIUM.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) FAILURE TO PROPOSE.—If the Administrator determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsections, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

(f) Release From Liability.—

(1) Covenant not to sue.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any future liability under this Act resulting from a release or threatened release of a hazardous substance addressed by the remedial action, whether that action is onsite or offsite, if each of the following conditions are met—

(A) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

(B) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(C) The response action has been approved by the Administrator.

(2) Factors.—In assessing the appropriateness of a covenant not to sue, the Administrator shall consider whether the covenant is in the public interest on the basis of such factors as the following—

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(3) Contingency fund.—The other sources of funding referred to in paragraph (2)(E) may include any premiums paid to the Administrator by persons obtaining covenants under this section. Notwithstanding any other provision of law, the Administrator shall place such premiums in a contingency fund established by the Administrator under this paragraph. The Administrator may use the amounts placed in the contingency fund to carry out future remedial action under this section with respect to facilities which are subject to covenants not to sue under this subsection.

(g) De Minimis Settlements.—Nothing in this Act shall be construed to prohibit the Administrator (in an action under section 106 or section 107 of this Act) from reaching final settlements with, and granting releases from liability to, any potentially responsible party in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility—

(1) The amount of the hazardous substances contributed by that party to the facility.

(2) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(h) Definition of Potentially Responsible Party.—As used in this section, the term potentially responsible party means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Application.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

(b) Reimbursement.—In accordance with rules promulgated by the Administrator, the Administrator is authorized to reimburse local community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(c) Amount.—The amount of any reimbursement to any local authority under this section may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which such facility is located. During the 5-fiscal year period commencing September 1, 1985, not more than 0.1 percent of the total amount available in the Hazardous Substances Superfund may be used for the purposes of this section. Expenditures for reimbursement under this section shall be treated as costs of response for purposes of section 111.

SEC. 124. LANDFILL GAS OPERATORS.

(a) Exemption From Certain Liability.—Notwithstanding the provisions of section 114, no landfill gas operator shall be liable in an action under section 106 or 107 of this Act, including an action for contribution or indemnification, for injuries, costs, damages, expenses, or other liability referred to in subsection (b), for costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances.

(b) Extent of Exemption.—The exemption under this section shall apply to all injuries, costs, damages, expenses, for other liability asserted under section 106 or 107 of this Act, or costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances rsesulting from a release or threatened release of a hazardous substance or pollutant or contaiminant from a facility unless such release was caused by conduct of the landfill gas operator which was negligent, reckless, or intentional misconduct. This exemption shall not apply to any landfill gas operator covered by the provisions of paragraph (1), (2), (3) or (4) of subsection (a) of

section 107 with respect to the release or threatened release concerned if the landfill gas operator would be covered by those provisions if he were not a landfill gas operator.

(c) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any authority of Federal or State law of any person other than a landfill gas operator.

(d) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under section 106 or 107 of this Act.

(e) CONDENSATE.—

(1) EXCLUSION.—Except as provided in paragraph (2), no landfill gas operation shall be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solic Waste Disposal Act.

(2) REGULATION.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recovered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such condensate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act, and shall be regulated accordingly under that subtitle.

(3) RETURN OF CONDENSATE.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless treated so that it is no longer a free liquid.

(f) DEFINITIONS.—As used in this section—

(1) LANDFILL GAS OPERATION.—The term "landfill gas operation" means, the installation or operation of a system for the recovery or processing of methane from a landfill (including, but not limited to, recirculation to the landfill of condensate consisting of water and other liquids removed from the gas recovered from the landfill).

(2) LANDFILL GAS OPERATOR.—The term "landfill gas operator" means with respect to a release or threat of release from any facility, any person to the extent he is involved in landfill gas operation.

SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

(a) REVISION OF HRS.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priority List (NPL) and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) Inclusion Prohibited.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the NPL any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the NPL based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.

SEC. 126. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

(a) Review.—The Administrator shall conduct a review of State programs to protect public health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The review shall only be conducted in the case of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

(b) Enforcement.—

(1) Determination.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that public health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of public health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

(2) The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of the public health or the environment may require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

(c) Deadlines.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of enactment of this section.

(d) Definition.—For purposes of this section, the term "annular injection" means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

SEC. 127. INDIAN TRIBES.

(a) Definition.—As used in this Act, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The

term does not include any Alaska Native regional or village corporation.

(b) Future Maintenance and Cost-Sharing Requirements.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

(1) Land or water held by an Indian tribe.

(2) Land or water held by the United States in trust for Indians.

(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

(4) Land or water otherwise within the borders of an Indian reservation.

In the case of remdial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance required by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

(c) Contracts or Cooperative Agreements.—

(1) Authority.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

(2) Enforcement.—If the President enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

(d) Natural Resources Liability.—

(1) Liability to tribe.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Exemptions.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following—

(A) The damages to natural resources complained of were specifically identifed as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environment analysis.

(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license this subparagraph ap-

plies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

(3) Recovery.—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be availale for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(e) Delegation.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

(f) Application of Other Provisions.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) Short Title.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provisions, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

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Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous [Substance Response Trust Fund] *Substances Superfund*" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

* * * * * * *

[(c) Expenditures From Response Trust Fund.—

[(1) In general.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) Limitations on expenditures.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) an (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

(C) Expenditures from Trust Fund.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of title I of this Act.

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Subtitle C—Post-Closure Tax and Trust Fund

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SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

[(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

[(b) Expenditures From Post-closure Liability Trust Fund.—Amounts in the Post-closure Liability Trust Fund shall be available only for the puroses described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

[(c) Administrative Provisions.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.]

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a) The [President] *Administrator* shall submit to the Congress within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the [President] *Administrator* shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility, provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report of the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) The [President] *Administrator* shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The [President] *Administrator* shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

(c)(1) The [President,] *Administrator,* acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than [two years after the enactment of this Act] *6 months, after the enactment of the Superfund Amendmemts of 1985,* shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternate protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct or indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environmental caused by the release of hazardous substances into the envirnoment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available by pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) INSURABILITY STUDY.—

(1) STUDY GROUP.—The Administrator shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

(A) 2 representatives of the Administrator.

(B) 4 representatives of persons described in paragraph (2).

(C) 2 representatives of groups of organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

(D) 3 representatives of propoerty and casualty insurers.

(E) 1 representative of reinsurers.

A representative of the Administrator shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

(2) STUDY.—The study group shall undertake a study to determine the insurability of the liability of the following:

(A) Persons who generate hazardous substances: liability for costs under this Act.

(B) Persons who own or operate facilities: liability for costs under this Act.

(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

(3) ITEM EVALUATED.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following—

(A) current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of persons upon whom is imposing under this Act on the underwriting and pricing of insurance coverage.

(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding enactment of this subsection.

(G) Other impediments to insurability.

(4) SUBMISSION.—The report shall be submitted to the Congress with appropriate recommendations, within 18 months after the enactment of the Superfund Amendments of 1985.

EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

[EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

CONFORMING AMENDMENTS

SEC. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provisions of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the   dealing with the matter of   , which rule or regulation was transmitted to Congress on   .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

SEC. 306. (a) Each hazardous substance which is listed *and regulated* or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed *and regulated* as a hazardous material under the Hazardous Materials Transportation Act.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed *and regulated* pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation."

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

Sec. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

Sec. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall be affected thereby.

SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

(a) State Statutes of Limitations for Hazardous Substances Cases.—

(1) Exception to state statutes.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the Federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

(b) Definitions.—As used in this section—(I) Title I terms.—The terms used in this section shall have the same meaning as when used in title I of this Act.

(2) Applicable limitations period.—The term "applicable limitations period" means the period specified in a statute of

limitations during which a civil action referred to in subsection (a)(1) may be brought.

(3) COMMENCEMENT DATE.—The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "Federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury referred to in subsection (a)(1) was caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term "Federally required commencement date" means the later of the date referred to in subparagraph (A) or the following—

(i) In the case of a minor, the date on which the minor reaches the age of majority as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(c) EFFECTIVE DATE.—This section shall take effect with respect to actions brought after December 11, 1980.

SEC. 310. CITIZENS SUITS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

(2) against—

(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency, or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

(b) VENUE.—

(1) ACTIONS UNDER SUBSECTION (A)(1).—Any action under paragraph (1) of subsection (a) shall be brought in the district court for the district in which the alleged violation occurred.

(2) ACTION UNDER SUBSECTION (A)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the requirement concerned and to impose any civil penalty provided for violation of that re-

quirement. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

(d) SUBSECTION (a)(1) ACTIONS.—

(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or disposal—

(A) to the Administrator;

(B) to the State in which the alleged violation occurs; and

(C) to any alleged violator.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) ACTIONS UNDER PARAGRAPH (1).—No action may be commenced under subsection (a)(1) with respect to any violation referred to in such subparagraph if the Administrator has commenced and is diligently pursuing an action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.

(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—In any action under this section the United States, if not a party, may intervene as a matter of right.

(i) DEFINITIONS.—The terms used in this section shall have the same meaning as when used in title I.

TITLE IV—POLLUTION INSURANCE

SEC. 401. DEFINITIONS.

As used in this title—

(1) INSURANCE.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which

is determined to be insurance under applicable State or Federal law.

(2) POLLUTION LIABILITY.—The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) RISK RETENTION GROUP.—The term "risk retention group" means any corporation or other limited libility association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary actively consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authoized to engage in the business of insurance under the laws of any States; and

(D) which does not exclude any person from membership in the group solely to private for members of such a group a competitive advantage over such a person.

(4) PURCHASING GROUPS.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) STATE.—The term "State" means any State of the United States or the District of Columbia.

SEC. 402. STATE LAWS.

Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

SEC. 403. RISK RETENTION GROUPS.

(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from any State law, rule, or order described in paragraph (1) through (4)—

(1) A law, rule, or order which make unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State.

(4) A law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) EXCEPTIONS.—

(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State

in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following—

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process. Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(F) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(G) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F).

(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker from a risk retention

group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 404. PURCHASING GROUPS.

(a) Exemption.—Except as provided in this section, a purchasing group is exempt from any State law, rule, or order described in paragraphs (1) through (8)—

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

(b) Application of Exemptions.—the exemptions specified in subsection (a) apply to the following—

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group—

(A) Pollution liability insurance, and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 405. APPLICABILITY OF SECURITIES LAWS.

(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

SECTION 9003 OF THE SOLID WASTE DISPOSAL ACT

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Subtitle I—Regulation of Underground Storage Tanks

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RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

SEC. 9003 (a)* * *

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(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

(1) BEFORE (C)(4) REGULATIONS.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

(A) undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B) into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in the Petroleum Release Response Account of the Hazardous Substances Superfund for payment of costs incurred for corrective action under subparagraph (A). The Administrator may issue an order to require the owner or operator of an underground storage tank to comply with subparagraph (B). Any violation of such an order shall be enforced in the *same manner as provided in the case of an order under section 9006.*

(2) After (c)(4) regulations.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date the Administrator may undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B)) into the environment from an underground storage tank only if such action is necessary, in the judgement of the Administrator, to protect human health and the environment and one or more of the following situations exists—

(A) No person can be found who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

(3) Recovery of costs.—

(A) In general.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (4), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(B) Interim limit on liability.—(i) Until a determination is made under subparagraph (C), the maximum liability under this paragraph shall be $3,000,000 for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs.

(ii) In additional corrective action is required to respond to a release of petroleum from an underground storage tank which occurs after completion of prior corrective action in response to an earlier release, the maximum liability under this paragraph shall be $3,000,000 for such subsequent corrective action.

(iii) The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

(C) PERMANENT REGULATIONS.—At the time financial responsibility regulations are promulgated by the Administrator under this section, the Administrator shall determine whether limitations on the liability imposed under subparagraph (A) are appropriate. If the Administrator determines that such limitations are appropriate, he may promulgate regulations establishing limits on such liability applicable to various categories of owners and operators and adjusting the $3,000,000 limitation established under subparagraph (B). Such regulations shall take into consideration the following factors—

(i) The volume of petroleum handled at the types of facilities involved.

(ii) The effect of liability under this section on the small business segment of the petroleum marketing industry.

(iii) The results of studies and actions undertaken in accordance with subsection (d).

(iv) Such other factors as the Administrator may deem pertinent.

(D) LIMITATIONS INAPPLICABLE.—Notwithstanding the limitations on liability contained in paragraph (B) of this subsection, the liability of a person under this subsection shall be the full and total costs incurred by the Administrator or the State in undertaking corrective action in either of the following circumstances—

(i) Where the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person.

(ii) Where the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with corrective action activities under this Act.

(E) CONTRACTS, ETC. NOT AFFECTED.—Nothing in this subsection shall be deemed to affect or modify in any way, contracts or other agreements between owners, operators, or third parties, or the responsibilities of these parties as defined in regulations promulgated under section 9003 of this Act.

(F) FACILITY.—For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owners or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(4) CORRECTIVE ACTION.—The corrective action undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned. The costs of such study shall not be treated as corrective action for purposes of paragraph (4), relating to cost recovery.

(5) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), and (3) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make grants to the State from the Petroleum Release Account of the Hazardous Substance Response Trust Fund. Such grants shall be apportioned among the States applying for grants based upon the number of underground storage tanks located in the respective States determined on the basis of information available to the Administrator under this subtitle.

(6) DEFINITION OF OWNER.—As used in this subsection the term "owner" shall not include any mortgagee or other person who owns a security interest in the tank or who has acquired title to the tank by reason of a mortgage or other security interest.

Internal Revenue Code of 1954

* * * * * * *

CHAPTER 38—ENVIRONMENTAL TAXES

SUBCHAPTER A. Tax on petroleum.
SUBCHAPTER B. Tax on certain chemicals.
[SUBCHAPTER C. Tax on hazardous waste.]

Subchapter A—Tax on Petroleum

Sec. 4611. Imposition of tax.
Sec. 4612. Definitions and special rules.

SEC. 4611 IMPOSITION OF TAX.

(a) GENERAL RULE— * * *

* * * * * * *

(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, [1985] *1990,* except that if on September 30, [1983] *1988,* or September 30, [1984] *1989*—

(1) the unobligated balanced in the Hazardous Substance Response Trust Fund as of such date exceeds [$900,000,000] *$4,900,000,000* and

(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed [$500,000,000] *$2,700,000,000* on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

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[Subchapter B—Tax on Certain Chemicals

[Sec. 4661. Imposition of tax.
[Sec. 4662. Definition and special rules.

[SEC. 4661. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

[(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

[SEC. 4662. DEFINITIONS AND SPECIAL RULES.

(a) Definitions.—For purposes of this subchapter—

[(1) Taxable chemical.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

[(A) which is listed in the table under section 4661(b), and

[(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

[(2) United States.—The term "United States" has the meaning given such term by section 4612(a)(4).

[(3) Importer.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

[(4) Ton.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

[(5) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

[(b) Exceptions: Other Special Rules.—For purposes of this subchapter—

[(1) Methane or butane used as a fuel.—Under regulatons prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacturer or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

[(2) Substances used in the production of fertilizer.—

[(A) In general.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

[(B) Qualified fertilizer substance.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

[(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

[(ii) sold for use by any purchaser in a qualified fertilizer use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

[(C) Qualified fertilizer use.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

[(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

[(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

[(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

[(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

[(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term "qualified fuel substance" means any substance—

[(i) used in a qualified fuel use by the manufacturer, producer, or importer,

[(ii) sold for use by any purchaser in a qualified fuel use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

[(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—

[(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

[(ii) any use as such a fuel.

[(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

[(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was impsed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

[(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

[(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

[(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

[(ii) any solution or mixture containing any chemical described in clause (i).

[(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

[(c) Use by Manufacturer, Etc., Considered Sale.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

[(d) Refund or Credit for Certain Uses.—

(1) In general.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any taxable chemical, and

[(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

[(2) Use as fertilizer.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

[(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(3) Use as qualified fuel.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any chemical discribed in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

[(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(e) Disposition of Revenues From Puerto Rico and the Virgin Islands.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.]

Subchapter B—Tax on Certain Chemicals

Sec. 4661. Imposition to tax.
Sec. 4662. Definitions and special rules.

SEC. 4661. IMPOSITION OF TAX.

(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	*The tax is the following amount per ton:*
Acetylene	*$4.87*
Benzene	*4.87*
Butane	*4.87*
Butylene	*4.87*
Butadiene	*4.87*
Ethylene	*4.87*
Methane	*3.44*
Naphthalene	*4.87*
Propylene	*4.87*
Toluene	*4.87*
Xylene	*4.87*
Ammonia	*2.64*
Antimony	*4.45*
Antimony trioxide	*3.75*
Arsenic	*4.45*
Arsenic trioxide	*3.41*
Barium sulfide	*2.30*
Bromine	*4.45*
Cadmium	*4.45*
Chlorine	*2.70*
Chromium	*4.45*
Chromite	*1.52*
Potassium dichromate	*1.69*
Sodium dichromate	*1.87*
Cobalt	*4.45*
Cupric sulfate	*1.87*
Cupric oxide	*3.59*
Cuprous oxide	*3.97*
Hydrochloric acid	*0.29*
Hydrogen fluoride	*4.23*
Lead oxide	*4.14*
Mercury	*4.45*
Nickel	*4.45*
Phosphorus	*4.45*
Stannous chloride	*2.85*
Stannic chloride	*2.12*
Zinc chloride	*2.22*
Zinc sulfate	*1.90*
Potassium hydroxide	*0.22*
Sodium hydroxide	*0.28*
Sulfuric acid	*0.26*
Nitric acid	*0.24*

(c) Termination.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

SEC. 4662. DEFINITIONS AND SPECIAL RULES.

(a) Definitions.—For purposes of this subchapter—

(1) Taxable chemical.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).

(3) IMPORTER.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(4) TON.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of $2,000 pounds on a molecular weight basis.

(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—

(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).

(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

(A) IN GENERAL.—In the case of a nitric acide, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) QUALIFIED FERTILIZER USE.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term "qualified fuel substance" means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use s such a fuel.

(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

(i) barium sulfide, cuprice sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, not tax shall be imposed under section 4661(a).

(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term "qualified animal feed substance" means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sole for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) QUALIFIED ANIMAL FEED USE.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(c) USE OF MANUFACTURER, ETC., CONSIDERED SALE.—Except as provided in subsection (b), if any person manufacturers, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(d) REFUND OR CREDIT FOR CERTAIN USES.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any cases to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substances manufactured or produced.

(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit of refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE RGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of ction 7652 shall not apply to any tax imposed by section 4661.

[Subchapter C—Tax on Hazardous Wastes

ec. 4681. Imposition of tax.
ec. 4682. Definitions and special rules.

EC. 4681. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on the re-ipt of hazardous waste at a qualified hazardous waste disposal fa-ity.

[(b) AMOUNT OF TAX.—The amount of the tax imposed by subsec-n (a) shall be equal to $2.13 per dry weight ton of hazardous iste.

EC. 4682. DEFINITIONS AND SPECIAL RULES.

[(a) DEFINITIONS.—For purposes of this subchapter—

[(1) HAZARDOUS WASTE.—The term "hazardous waste" means any waste—

[(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

[(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

[(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term "qualified hazardous waste disposal facility" means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

[(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

[(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

[(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.]

* * * * * * *

ADDITIONAL VIEWS OF MR. ECKART

As primary sponsor of H.R. 2817, I am proud of this legislation as it has passed out of this Committee. Much effort has gone into improving the bill, and that effort has succeeded in substantially strengthening the Superfund program. However, I was very disappointed in the Committee's failure to approve, by a narrow margin of 22 to 20, an amendment which I view as an essential element of citizen protection under Superfund. This amendment would have allowed a citizen who is or may be adversely affected by a release of a hazardous substance from a facility which may be presenting an imminent and substantial endangerment to health or the environment to bring a civil action against any person who is contributing to that endangerment.

H.R. 2817 does contain a provision allowing citizens to sue any person to force compliance with requirements of the Act, or to require the Administrator of the Environmental Protection Agency, or the head of any other federal agency, to perform a mandatory duty under the Act. I wholeheartedly endorse these provisions. They are essential to the proper implementation and enforcement of the Superfund program. But they are not complete. The imminent and substantial endangerment provision, the so-called "third prong" of the citizen suit package, it still missing.

The Solid Waste Disposal Act Amendments of 1984 ("SWDA"), which the President signed into law last November 8, contains a provision allowing citizens to sue for the creation of an imminent and substantial endangerment. The provision which failed in the Energy and Commerce Committee this year tracks that provision in the Solid Waste Disposal Act. The only substantive change is that the Superfund provision would relate to hazardous substances, which are the subject of Superfund, rather than hazardous and solid wastes, which are the subject of the Solid Waste Disposal Act. Under this provision, a citizen must show that he is or may be adversely affected by a release of any of those substances. This is to avoid frivolous lawsuits brought by people without an affected interest. The provision also contains prohibitions on citizen suits where EPA is taking a remedial action or an enforcement action to clean up a Superfund site. This is to avoid the potential for slowdowns or interference with ongoing Superfund cleanups.

But there are an estimated 20,000 or more hazardous waste sites in this country. EPA will never be able to address many of these sites, and will get to others only years from now. If a citizen who is adversely affected by a facility can show that a release of a hazardous substance from that facility is creating an imminent and substantial threat to his health, then I believe he should have the right to go to court to get the leaking barrels removed or to obtain other abatement action. The requirement of a showing of an imminent and substantial endangerment may be a difficult burden of proof for the citizen, but he should have the right to try to meet it where his health is at stake. If the government lacks the resources or is unwilling to act, citizens must have a uniform federal right to protect themselves from dangerous hazardous substances.

To protect against the claim that a plethora of suits may result from this provision, forcing EPA involvement ans so delaying the cleanup program, I have checked into whether the imminent and substantial endangerment citizen suit provision of the Solid Waste Disposal Act has been abused, or has caused EPA an undue burden since it was enacted last November.

Based on information provided by EPA, in over nine months there have been five complaints filed where the SWDA imminent and substantial suit provision was invoked as a jurisdictional basis. Two of these five cases involved government entities—one where the State of Illinois intervened and another where the Southington Water Works Department, Southington, Connecticut, brought an action. One of the cases involved a company suing another company. Only two of the five cases, one in New York where residents of Gloversville sued regarding the municipal dump and another in Pennsylvania where residents around a facility sued, involved the common conception of a citizens' group suing., These two cases also involve local groups of citizens who reside around the facility, and have an affected interest.

Speculative fears about the imminent and substantial endangerment provision having a dramatic impact on reordering agency priorities are not based on an understanding of this provision, nor supported by experience over the past nine months with the similar SWDA citizen suit provision. The importance of protecting the public health far outweighs any objection to enactment of this citizens' right in Superfund.

During floor consideration of H.R. 5640 last year, the House by a significant vote of 248-141 specifically approved this citizen suit provision of Superfund. I intend to continue working with the Members of this Committee and of the whole House to urge them to once again support an amendment to adopt the imminent and substantial endangerment provision on the floor.

D.E. ECKART.

ADDITIONAL VIEWS OF MR. MARKEY ON H.R. 2817

The stated purpose of H.R. 2817 is to reauthorize and expand the Superfund program under the Comprehensive Environmental Response, Compensation, and Liability Act. This goal is vital to the protection of the public health and our environment since hazardous waste sites present an imminent and substantial danger. The goal becomes more urgent in light of the expiration of the Superfund authorization on September 30, 1985.

For these reasons, the reauthorization of the Superfund program remains a top priority of Congress. However, the dismal five-year history of the Superfund program illustrates in a relief etched with incompetence, mismanagement and negligence that great care must be taken to construct a program that contains stringent schedules and standards which will guide the Environmental Protection Agency's actions. Without such schedules and cleanup standards, Congress is accomplishing nothing more than building a huge fund to achieve very little. In addition, a sound and sensible Superfund program must grant citizens the right to sue private parties if there is an imminent and substantial danger to their health and environment. Because the bill before the Committee contains none of these provisions, I voted against its passage.

It should also be noted that the Committee rejected several amendments which would have improved significantly the program outlined in the bill. An amendment offered by Mr. Markey to eliminate the application of the concept of "fund balancing" to private party actions was amended by a provision which makes plain the Administrator's obligation to assess the ability of the Fund to pay for an action before requiring private parties to finance a cleanup. This provision perverts liability principles and makes the federal Fund the limit of private party liability. Consequently, this provision greatly compromises the effectiveness of EPA's Superfund enforcement program, and should not be part of the bill.

The other provision of the bill which merits attention revolves around the rights of citizens to sue private parties. The bill gives citizens the right to sue the EPA for action but fails to extend this right to permit citizens to sue private parties if there is an imminent and substantial danger present. Virtually all of the major environmental laws passed by Congress contain this right and experience teaches us that this right has been very effective in enforcing the law and very helpful to citizens faced with a threat to their health. An amendment was offered to correct this flaw and permit citizens to sue private parties. Unfortunately, the Committee rejected this amendment. For the sake of citizen participation and the protection of their health, the bill should be amended to permit such citizens suits.

The reauthorization of the Superfund program remains a top priority, and Congress must not relax in its effort to renew this vital environmental program. The bill passed by the Committee contains a number of sensible provisions, including an adequate funding level of $10 billion. But in order to close the book on Superfund's deplorable performance over the past five years, a tough, comprehensive program must be enacted soon. This program should contain schedules, strict deadlines, the right of citizens to sue private parties, and it should eliminate the ill-conceived notion that "fund balancing" should apply to private parties. If this bill were amended to include these provisions, then it would deserve the full support of the House.

ED MARKEY.

ADDITIONAL VIEWS OF CONGRESSMAN DOUG WALGREN TO H.R. 2817

H.R. 2817, the Superfund extension bill, as reported by the House Energy and Commerce Committee, makes a dramatic change: For the first time, Congress would vest in the EPA the express power to release any party from liability under the Act—present or future—without limitation. Under section 121 of the bill, the Administrator is given express authority to enter into settlement agreements for cleaning up hazardous wastes sites under which liability would in essence, be what the Administrator says it would be.

I believe this express authority breaks dangerous new ground and, in fact, is an abandonment of the public's trust. Under the terms of the bill, the Administrator of EPA is given the power to completely release, from all liability under the Act, even for damages that may be unknown or which may develop in the future.

I am disappointed that the committee did not adopt an amendment I offered designed to circumscribe EPA's authority to grant total releases from liability. My amendment would have provided that an unconditional release of liability could not be granted for conditions that are unknown or undetected at the time the agreement is entered where those conditions ultimately cause a substantial danger to the public health, welfare, or the environment. The amendment would have specifically required court approval of any release from liability based on a public interest standard.

This kind of limitation on releases for unknown conditions is especially important for two reasons: First, it is fundamental that polluters should pay to protect the public from hazardous wastes created by them. As a general rule, therefore, liability, must continue until the waste no longer presents a hazard.

Secondly, we have relatively little experience in isolating hazardous waste for long periods of time. There is the clear danger that sweetheart releases may result in widespread releases of those responsible for the hazardous waste, with the costs simply shifted to the public taxpayer.

Removing all liability additionally carries with it the incentive to do shoddy clearups. If one does not face any future responsibility for dangers, there is a built-in incentive to do as little as possible. If there is no "warranty" or possibility of future responsibility, one may be inclined to "get it over with" with little effort. With no fear of future responsibility, there is a danger of rushing to settle and settling for the "quick-and-dirty" solution.

Another risk in releasing companies of all future liability is the problem of collateral parties or suits. A total release is inappropriate in my view because it could completely close out others from seeking recourse against hazards.

Some will argue that total releases from liability are necessary to get companies to the negotiating table. We certainly should encourage settlements. But in public policy in this area, the need for finality must be weighed against the public's need for health and safety. We would be ignoring the public's need for health and safety. We would be ignoring the public trust if we allow EPA to negotiate away the public's rights to protection.

I hope this bill is amended and perfected before it is enacted into law. The public deserves and expects strong safeguards in this very critical area. Without amendment it is ripe for abuse, as recent EPA history has sadly shown us.

Doug Walgren.

DISSENTING VIEWS OF HON. JAMES H. SCHEUER

When this Committee passed the first Superfund law in 1980, we had high hopes that by 1985 the worst of the hazardous waste sites across the nation would be only a memory.

We now know that we were naive and overly optimistic.

EPA's performance in the last five years has not been inspiring. Out of the thousands of waste sites eligible for Superfund clean-up, EPA has cleaned up only six. During the era of Mrs. Burford and Rita Lavelle, the program was marred by mismanagement and misconduct. While clean-up moves at a snail's pace, the Superfund drifts from its appointed imperative and many toxic waste sites go undiscovered or unattended.

In my view, the bill reported by the Committee fails to include the provisions which are necessary to get this program back on the fast track. While the bill reported out by the Committee is better in some respects than the product of the Subcommittee's deliberations, it falls far short of the Superfund bill that is needed to accomplish our goal of cleaning up our Nation's worst hazardous waste sites.

The main flaw in the bill is that it gives far too much discretion to the EPA to continue on its present course of doing too little, too slowly. Tight deadlines, mandatory clean-up standards, and tough citizen suit provisions would have given the EPA the type of direction and control it apparently needs. Loopholes, like that giving EPA the ability to enter into settlement agreements with polluters that cannot be fully reviewed by the court, open up the potential for companies to escape their responsibilities for cleaning up their toxic waste sites.

Furthermore, the bill as reported by the Committee contains disturbing concessions to special interests. Particularly offensive is the provision limiting the liability of the oil companies to pay for the cost of cleaning up the contamination caused by leaking underground storage tanks. The EPA has stated that gasoline leaking from rusting underground storage tanks is one of the leading causes of groundwater contamination. A recent survey in Massachusetts, for example, revealed that 70 percent of the underground gasoline storage tanks in the state are more than twenty years old; almost all of them are made of iron. New York State estimates that abut half of the tanks that have been underground for 15 years or more have been leaking.

The protection of underground water supplies is made all the more urgent by the simple fact that we cannot presently clean up groundwater once it has been contaminated. Natural processes take decades, if not centuries, to restore the underground water to an uncontaminated state. Yet underground water is the major source of our drinking water supplies in many parts of the country.

Clean-ups are expensive. In Northglenn, Colorado, in 1980, Chevron spent $10 to $12 million to resolve the liability for cleaning up a 30,000 gallon gasoline leak. In 1978, Exxon spent between $5 and $10 million as a result of leak in East Meadow, New York. Estimates for liability resulting from such underground gasoline leaks range as high as $25 million.

This bill caps the liability of the oil companies for cleaning up underground tank leaks at $3,000,000; the taxpayers will foot the remaining clean-up bill. To put this in some perspective, consider that, in 1984 Exxon, the nation's second largest company, with over 20,000 dealers, earned profits of $5.5 billion. Earnings at other big oil companies were equally healthy. The potential scope of the problem is indicated by the fact that eleven oil companies alone have nearly 150,000 dealers, each with gasoline storage tanks buried underground.

For all of these reasons, I believe that the bill as reported by the Committee is fatally deficient. I intend to work with my colleagues to strengthen and improve this bill on the floor.

JAMES SCHEUER.

SEPARATE AND DISSENTING VIEWS—SUPERFUND AMENDMENTS OF 1985 (H.R. 2817)

INTRODUCTION AND OVERVIEW

Reauthorization of the Superfund program is one of the most important tasks facing the 99th Congress. Funding for the first five-year installment of the program will expire on October 1, 1985 with cleanup work begun at less than 10 percent of the 800 worst sites included on the Environmental Protection Agency's (EPA) National Priorities List. The List is expected to grow to between 2,000—4,000 sites over the next few years. Estimates of the federal costs for the cleanup job that still lies ahead of us range from $23 to $39 billion. This crucial environmental program clearly must be both extended and expanded.

But money alone cannot rescue what has been to date a tragically disappointing and ineffective cleanup effort. Limitations on financial resources have not crippled EPA's implementation of Superfund; rather, the problem lies in the fundamentally misguided policies which have shaped the program throughout much of its history. These misguided policies include both the failure to establish clear internal deadlines and standards for the agency's cleanup activities and the agency's propensity to let private parties escape their fair legal liability for the damages caused by Superfund sites.

On July 25, 1985 the Committee on Energy and Commerce voted to report H.R. 2817, a bill reauthorizing the Superfund program at a funding level of $10 billion for the next five years. While we support the legislation's funding level and some aspects of the programmatic changes it contains, we were compelled to oppose adoption of many of its key provisions. In our view, the legislation contains several fatal flaws which must be addressed if it is to both accomplish the effective reauthorization of the program and justify the commitment of $10 billion in federal funds to a renewed cleanup effort.

We intend to work with our colleagues to continue to improve this important legislation as it proceeds through the House. At the very least, the legislation must be strengthened to the point where it resembles the Superfund bill overwhelmingly approved by the House during the 98th Congress, 323 to 23. As it stand now, the bill reported by the Committee is substantially weaker than the bill passed last year.

We are filing these additional views in order to explain, with some specificity, why we believe that the legislation is fatally flawed and must be improved. In the pages that follow, our comments on the legislation will develop a few basic themes.

First, and foremost, we believe that the legislation delegates policy decisions that must be made by the Congress to the open-ended discretion of an administrative agency that has consistently abused the public trust. In such important areas as the schedules and standards which will govern the future implementation of the program, the legislation defers vital decisions concerning the pace of cleanup and the degree of compliance with prevailing public health regulations to the discretion and goodwill of EPA's senior management.

Second, the legislation contains unwarranted incursions on the states' rights to impose public health standards which they believe are necessary to protect their citizens. The legislation would impose all costs of complying with such standards in the context of a Superfund remedial action on the states themselves, even where a private responsible party is being used for cleanup costs.

Third, the legislation contains several provisions which will weaken the legal liability of private parties responsible for creating the sites. Over the long run, these provisions could undermine the fiscal integrity of the federal trust fund by making it far more difficult for EPA to recover its cleanup costs from those found specifically liable for the sites.

Fourth, the legislation also undercuts the overall national cleanup effort by omitting a provision contained in last year's House bill which would permit citizens to sue polluters to compel cleanup, in circumstances where neither EPA nor the states are taking action in response to these imminent and substantial hazards.

Fifth, the legislation contains special interest exemptions which cannot be justified on the basis of public policy. For example, the bill caps the liability of major oil companies for environmental damage caused by leaking underground storage tanks no matter what the nature and scope of the release or the resources of the company at issue and keeps dangerous fly ash sites off the National Priorities List until EPA completes an unnecessary and lengthy rulemaking proceeding.

Finally, the legislation omits several basic provisions designed to inform communities of the toxic emissions which routinely occur in their environment. In the wake of the Bhopal tragedy, adequate community right to know legislation is not only necessary, but imperative.

Over the weeks ahead, we intend to make every effort to improve these and other aspects of the legislation. We urge our colleagues to join us in strengthening the final bill to be considered by the House.

We have provided our comments on the bill section by section to point out why we believe the bill is deficient.

SECTION BY SECTION

SECTIONS 1 AND 2

Short title and amendment to CERCLA

The short title of the legislation is the "Superfund Amendments of 1985". The legislation contains amendments to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Internal Revenue Code, and the Solid Waste Disposal Act.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SECTION 101

Amendments to CERCLA definitions

The section revises the definition of "Administrator" under current law to retain all Presidential delegations of authority to agencies other than the Environmental Protection Agency (EPA) made prior to enactment of the legislation, except with respect to federal facilities, where the legislation establishes special rules for such delegations of authority (see section 119).

The section also adds language to the definition of "environment" under CERCLA which clarifies the intent of current law to include in the definition the abandonment or discarding of barrels, containers or other closed receptables.

The section modifies the definition of "remedy or remedial action" under CERCLA to explicitly include the offsite transport, storage or secure disposition of hazardous substances, pollutants or contaminants. It modifies the definition of "response action" to include related enforcement activities.

SECTION 102

Reportable quantities

The section would require the Administrator of EPA (hereinafter "Administrator") to promulgate regulations establishing reportable quantities of releases of hazardous substances, under section 102 of current law, by December 31, 1986.

SECTION 103

Notices; penalties

The section would clarify the intent of current law to apply the penalties available for failure to file notifications of hazardous substance releases to persons in charge of vessels, as well as facilities.

SECTION 104

Response authorities

1. Priority for public health threats

The section would require that, in conducting response actions under CERCLA, the Administrator must give primary attention to those releases which present a public health threat.

2. Short-term removal actions

The section states that in utilizing his authority to conduct short-term removal actions under current law, the Administrator shall take actions which will contribute to the efficient performance of any long-term remedial action at the facility. The section further provides that any such short-term removal action should be limited to $2,000,000 in cost or 12 months in duration unless the Administrator determines that continued removal action is consistent with any plans for long-term remedial action.

3. Assistance to the States

The section would impose a 50 percent cost-sharing requirement (or such greater share as the Administrator may determine) on states only for the cleanup of facilities which they both owned *and* operated. The section grants the states credits for specified amounts expended on the following types of activities:

Actions at National Priorities List sites after the date of enactment of the legislation if the remedial action is conducted under an agreement with the Administrator;

Actions at National Priorities List sites before the site is listed or before an agreement with the Administrator is reached if such expenditures would have been authorized under the agreement subsequently reached after the site is listed;

Cost-eligible response actions where costs were incurred after January 1, 1978 but before passage of current law; and

Remedial actions at facilities owned but not operated by a state after the enactment of current law but before the enactment of the legislation.

The section provides that the states may apply any reasonable administrative costs associated with running their Superfund programs towards their matching shares. It permits the Administrator to require prior approval of expenditures made after the date of enactment of the legislation as a condition of granting the state a credit.

Under an amendment approved by the Committee, the section provides that any "remedial action" at a National Priorities List facility shall include the completion of treatment or other measures (whether taken onsite or offsite) which are necessary to restore ground or surface water quality to a level that assures protection of human health and the environment. The amendment therefore ensures that the expensive and long-term process of pumping and treating groundwater shall be subject to the 90 percent federal and 10 percent state matching share formula for allocating remedial action costs. The amendment further provides that activities required to maintain the effectiveness of remedial actions once they have been completed shall be considered "maintenance" and therefore shall be subject to a 100 percent state matching share formula.

In a basic restatement of current law, the section would also allow states and local governments to apply to the Administrator to carry out response actions under section 104 of CERCLA. Within 90 days, the Administrator shall make a determination regarding such application and enter into a contract or cooperative agreement with the state or locality if the Administrator determines that the state or local government is capable of carrying out such actions. Such agreements shall be subject to such terms and conditions as the Administrator may prescribe.

4. EPA and State access and information gathering authority

The section would authorize the Administrator or the states, and their designated representatives, to take specified actions at a facility if there is a reasonable basis to conclude that there may be a release or threatened release at that location, including: (1) requests that persons with knowledge of such releases furnish information (including documents) and permit access to the facility at reasonable times; (2) entry of the facility at reasonable times; and (3) inspection and obtaining of any samples of a hazardous substance, pollutant or contaminant.

The section would give the Administrator authority to issue an order directing compliance with an information or access request and to ask the Attorney General to commence a civil action to compel compliance with the order.

5. Cleanup schedule

Finally, the section contains a series of performance targets for the Superfund program. None of these targets requires the initiation of any onsite cleanup work at any National Priorities List site until October 1, 1991, one year after the reauthorization legislation expires. The targets include:

Completion of the evaluation of all sites on the Emergency Response and Remedial Investigation System (ERRIS) list within two years of the date of enactment of the legislation, or the date of the site's placement on the list (whichever is later).

Initiation of preliminary remedial investigation and feasibility studies for all facilities listed on the National Priorities List at the rate of 150 in the first year after enactment, 175 in the second year after enactment and 200 in each of the third, fourth and fifth years after enactment.

Completion of remedial investigation and feasibility studies at no fewer than 600 facilities on the National Priorities List by October 1, 1990. The Administrator must submit an annual report to the Congress for each year of the five-year reauthorization period specifying how many preliminary studies EPA managed to complete during the previous year.

Commencement of remedial action at no fewer than 90 percent of the sites where remedial investigations and feasibility studies have been completed within 12 months after such studies are completed.

Because the section states that the Administrator must "ensure" commencement of the activities described above, the legislation clearly contemplates that all such activities undertaken by private responsible parties, in addition to fund-financed activities undertaken by EPA, are to be counted toward meeting its numerical targets.

Reading all of the targets established by the legislation together, EPA would be required to "ensure" commencement of cleanup work at a total of 540 facilities on the National Priorities List by October 1, 1991—one year after the reauthorization period contained in the legislation expires. The October 1, 1991 date is the only legal deadline contained in the legislation which requires the initiation of actual cleanup work. If the agency ignored this distant deadline, and simply failed to increase the pace of the program over the next several years, on one could legally challenge its disregard of its statutory mandate for six more years.

There are currently 800 facilities on the National Priorities List and EPA expects the List to grow to at least 2,000 sites over the next few years. In a comprehensive study of the Superfund program, the General Accounting Office (GAO) disputed EPA's conclusions, estimating that as many as 4,000 sites would end up on the National Priorities List once all abandoned hazardous known waste sites in the country had been evaluated. (See GAO Report to the Congress, "Cleaning Up Hazardous Wastes: An Overview of Superfund Reauthorization Issues," GAO/RCED-85-69, March 29, 1985.)

Under the bill approved by the Committee, cleanup would begin at only one-quarter of the sites EPA expects to list and one-eighth of the sites GAO expects to be listed over the next six years. The cleanup goals contained in the legislation convey the unmistakable message to the EPA Administrator that the Congress simply does not intend to hold the agency accountable for improving the agency's performance in cleaning up hazardous waste sites.

Supporters of the bill argue that open-ended goals are necessary in order to give the agency adequate flexibility to manage the program. The agency demands flexibility while at the same time claiming that it fully intends to accomplish a far more ambitious cleanup effort.

In testimony before the Subcommittee on Commerce, Transportation and Tourism, EPA Administrator Lee Thomas has stated that the agency intends to ensure that cleanup is underway at 920 National Priorities List sites over the next five years. According to Mr. Thomas, the Administration's $5.3 billion Superfund proposal will ensure fund-financed cleanups at about half of those facilities, with the remaining cleanups to be accomplished through dramatic increases in the agency's enforcement actions and settlements with private responsible parties. In fact, according to Mr. Thomas, a substantial portion of the Administration's $5.3 billion proposed fund would be spent on an expanded enforcement effort.

Given the $10 billion funding level approved by the Committee—and using Mr. Thomas' own assumptions regarding the ratio between fund-financed and private party cleanups—cleanup at some 1,840 sites could be initiated over the next five years. And yet the legislation approved by the Committee fails to hold EPA or the Administration even remotely accountable for meeting these announced targets, giving the agency six years to ensure the commencement cleanup at only 540 listed facilities.

Apart from the issue of what actual numerical goals the legislation should include, its supporters also argue that its open-ended requirements are necessary to give EPA the flexibility it needs to run the Superfund program properly. They contend that stringent statutory deadlines are ineffective in encouraging the agency to accomplish such important tasks.

The entire history of the Superfund program definitively refutes the argument that EPA can be completely trusted to manage any discretionary Superfund cleanup schedule effectively. Close to five years after the program began, EPA has managed to finish cleanup at only six sites. Funds for actual cleanup work have been obligated at less than ten percent of the 800 sites now on the National Priorities List.

A recent study by the Energy and Environmental Study Institute also refutes the general argument that statutory deadlines are ineffective in compelling agency action. The Institute interviewed over 100 individuals, including past and present EPA senior managers and staff, industry representatives, state environmental protection officials, representatives of environmental groups and Congressional staff experts. Ninety percent of those interviewed stated that deadlines were crucial in advancing the progress of EPA programs. Most of those interviewed commented that such deadlines are needed to "overcome the natural tendency of people and bureaucracies to procrastinate and avoid difficult and controversial decisions."

One of those interviewed, former EPA Administrator Anne Gorsuch Burford, stated "From an intellectual point of view deadlines are crappy legislation, from a real world point of view, they are necessary."

Douglas Costle, who was Mrs. Burford's counterpart during the last Democratic administration, echoed her views: "There is only so much you can learn by analysis. At some point you have to stop and take action. Some of the best work done by EPA has been under extraordinary deadline pressure."

In addition to concluding that deadlines in general are an essential compound of effective environmental protection programs, the Institute also found that court-ordered deadlines are the most effective in spurring agency action, especially because court orders are often necessary to counteract pressure on EPA by the Office of Management and Budget to abandon important programmatic initiatives.

SECTION 105

National contingency plan

The section requires the Administrator to revise the National Contingency Plan to reflect the amendments made by the legislation within 18 months of the date of enactment. It adds that the legislation does not require the Administrator to reevaluate any site listed on the National Priorities List before the date of enactment.

The section would require the Administrator to commence a proceeding to reevaluate the hazard ranking system ("Mitre Model") used to evaluate Superfund sites. It would require that contamination of ambient air be incorporated as a criterion in that system.

The section further states that any person may petition the Administrator to conduct a preliminary assessment of the hazards to public health or the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant. Within 12 months, the Administrator must complete such assessment or explain why such as assessment is not appropriate.

Finally, the section deletes the requirement in current law that the National Priorities List contain no fewer than 400 sites.

SECTION 106

Abatement actions

The section would prohibit the Administrator from issuing an abatement order under section 106 of current law with respect to the normal application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act.

Nothing in the legislation affects EPA's existing authority under current law to use the fund to clean up pesticide contamination.

SECTION 107

Liability

The section would apply the provisions of CERCLA to foreign vessels.

The section provides that all costs incurred by the United States or the states in investigating releases or threatened releases; in conducting health assessment studies; or in responding to releases between 1976 and 1980 shall be recoverable from responsible parties.

The section also given the Administrator authority to obtain prejudgment interest in all cost recovery actions.

The section further provides that the protection afforded under current law for rendering assistance in accordance with the National Contingency Plan shall apply to response costs, as well as damages to natural resources.

The section states that no state of local government shall be liable under CERCLA for costs or damages which result from emergency response actions taken at facilities owned by another person.

The section provides for the designation of federal and state officials to act as trustees for natural resources and creates a rebuttable presumption that their assessment of damages to such resources are valid.

The section would also establish a Federal government lien upon all real property belonging to persons otherwise liable for costs and damages under CERCLA.

SECTION 108

Financial responsibility

The section would amend current law to provide that any claim authorized under section 106 or 107 of CERCLA may be asserted directly against any guarantor of a responsible party only if such party is in bankruptcy, or is not solvent and subject to suit. The section states that the guarantor's total liability shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility.

SECTION 109

Penalties

The section would raise the civil and criminal penalties imposed under several provisions of CERCLA, and would establish some new penalties provisions. In general, civil penalties of $25,000 for each day of continued noncompliance would be authorized. Criminal penalties for knowing violations of three years imprisonment, or a fine in accordance with the federal criminal code, or both, would be authorized. The violations to which these penalties provisions would apply include:

Failure to comply with the notification provisions of section 103 of CERCLA. The section would also create a new penalties provision for filing false or misleading notifications;

Failure to comply with an information gathering or access request or order under section 104 of CERCLA;

Failure to comply with an abatement order issued under section 106 of CERCLA;

Failure to comply with the financial responsibility requirements of section 109 of CERCLA; and

Falsification of a claim filed under section 112 of CERCLA.

The section would allow the Administrator to assess and collect civil penalties in accordance with the same procedures as those applicable under the Toxic Substances Control Act.

SECTION 110

Tax on certain imported substances as alternative to Federal shares

The section provides that amounts authorized to be appropriated to the Superfund from general tax revenues shall be reduced by revenues derived from any tax on imported chemical derivative products, if such tax is enacted by the Congress. The section states that any import tax covered by its provisions would be designed to generate revenues of $140 million per year and would be imposed on the sale of any substance which is directly or substantially manufactured from a chemical feedstock assessed under the other tax provisions of CERCLA.

SECTION 111

Uses of the fund

The section establishes annual authorized appropriations for Superfund covering fiscal years 1986–1990. Such appropriations shall total $1.75 billion annually, with $250 million of such amounts to be derived from general tax revenues.

This section also would amend current law to expand uses of the Fund to include the new authorities created by the legislation. It would eliminate use of the Fund for payment of natural resource damage claims.

The section would require annual audits of the Superfund program by the Inspector General of the Environmental Protection Agency.

Finally, the section provides that, beginning in fiscal year 1986, no less than $30,000,000 a year shall be directly available to the Agency for Toxic Substances and Disease Registry to carry out the health authorities of the Act.

SECTION 112

Claims procedure

The section would establish a six-year statute of limitations for presenting claims to recover costs under section 107 of current law.

SECTION 113

Litigation, jurisdiction, and venue

The section would establish nationwide service of process in any action by the United States under CERCLA.

The section would also establish a federal right of contribution or indemnity for persons liable under section 106 or 107 of current law, but would prohibit assertion of such rights against a party who has entered into a settlement with EPA regarding the matters addressed in the settlement agreement. The section would apply a three-year statute of limitations to such cases.

The section would establish a three-year statute of limitations for the initiation of actions to recover claims for damages to natural resources which does not begin to run until regulations regarding the assessment of such damages under section 301(c) of CERCLA are promulgated. The section would also establish a six-year statute of limitations for the intiation of a cost recovery action under section 107 of current law.

Finally, under an amendment offered by Mr. Tauke and Mr. Richardson and approved by the Committee, the section would limit preenforcement review by the courts of EPA response actions taken under section 104 of CERCLA or contained in any order issued by the agency under section 106 of CERCLA. The section would limit any court challenge to such actions to the following six specific circumstances:

> Filing of a cost recovery action under section 107 of CERCLA by EPA or the states;
>
> filing of an action by EPA to either enforce an order issued under sections 104 or 106 of CERCLA or to collect a penalty for violation of such order;
>
> filing of an action by a private responsible party for reimbursement under section 106 of CERCLA (as amended by the legislation);
>
> filing of a citizens' suit under new section 310 of CERCLA (as amended by the legislation) alleging that the response action was in violation of any requirement of the law. The section would prohibit suits to challenge a removal action where EPA is undertaking a remedial action at the site; and
>
> filing of an action under section 106 of CERCLA by a potentially responsible party where such party has entered into a consent decree with EPA requiring such party both to undertake a remedial investigation and feasibility study at the site and to implement the remedial action decision of the Administrator following his review of the completed study.

The purpose of the Tauke-Richardson amendment is to prevent private responsible parties from filing dilatory, interim lawsuits which have the effect of slowing down or preventing EPA's cleanup activities. By limiting court challenges to the point in time when the agency has decided to enforce the liability of such private responsible parties, the amendment will ensure both that effective cleanup is not derailed and that private responsible parties get their full day in court to challenge the agency's determination that they are liable for cleanup costs.

The amendment also recognizes the full rights of affected citizens to obtain court review of the adequacy of the remedies selected by EPA at a site. It is the intention of the legislation to permit citizens to bring such challenges at the earliest opportunity without permitting such suits to delay or prevent ongoing cleanup work. Affected citizens should be able to file suit and obtain judicial review while there is still adequate time to require the agency to revise its response action plans to meet applicable legal requirements.

To eliminate unnecessary litigation, the Tauke-Richardson amendment establishes public participation procedures which will allow all interested persons an effective opportunity to advise the Administrator concerning the nature and scope of the remedial action plans which will be formulated at the site, including notice and a reasonable opportunity for comment on the proposed remedial action plan.

The Tauke-Richardson amendment further clarifies the intent of current law that judicial review of agency actions shall be judged by the arbitrary and capricious standard normally applicable to final agency determinations under the Administrative Procedure Act.

Finally, the Tauke-Richardson amendment permits such parties to seek reimbursement from the fund for any response costs they have expended within 60 days after such parties have completed a response action pursuant to an order issued by the government. The amendment further provides that private parties subsequently found to have no liability for the response costs at issue may also receive compensatory damages.

SECTION 114

Relationship to other law

The section would repeal the provision of current law which preempts state taxing authority in certain circumstances.

SECTION 115

Public health assessment and protection authorities

The section would require that, within 6 months of the date of enactment of the legislation, the Administrator of the Agency for Toxic Substances and Disease Registry (hereinafter "ATSDR Administrator") must prepare a list of at least 100 hazardous substances, pollutants and contaminants which the ATSDR Administrator determines pose the greatest risk to human health at National Priorities List sites. Within 24 months of the date of enactment, the ATSDR Administrator must add an additional 100 substances to the list. Within four years of the date of enactment, the ATSDR Administrator must prepare toxicological profiles of the first 100 listed substances at the rate of 25 per year and he must prepare profiles of the second 100 substances at the rate of 25 annually in the subsequent years. Such toxicological profiles shall consist of all available information on the substances. The section would give the ATSDR Administrator authority to initiate additional research on such substances.

The section further provides that the ATSDR Administrator shall perform a "health assessment" for each National Priorities List site which meets three criteria: (1) hazardous substances, pollutants or contiminants are present at the facility; (2) pathways of human exposure to such substances have been demonstrated at the facility; and (3) a significant threat of current or future adverse health effects may exist at the facility.

The section also would allow persons affected by exposure to hazardous substances, pollutants or contaminants to petition the EPA Administrator to perform a health assessment. The petition must provide evidence demonstrating that the petitioner is being exposed to a hazardous substance and an empirical analysis of the level of exposure. The Administrator must initiate such a study after receiving the petition if he determines there is a "reasonable likelihood" that (1) the hazardous substance came from a facility where such substances were treated, stored, recycled or disposed, or where a removal action under CERCLA has been taken; and (2) a substance may present a significant risk to human health. If the Administrator decides not to initiate an assessment, he must publish a written determination that there is no "reasonable likelihood" that (1) the exposure at issue presents a significant risk to human health or (2) the substance at issue came from a covered facility.

If the Administrator decides that evidence submitted by the petitioner and evidence available to EPA is not adequate to make the necessary determinations, the section would require him to inform the petitioner of that decision and explain what additional information is necessary. The section is not intended to impose on the petitioner any burden of producing information in the original petition beyond evidence concerning the existence of current exposure and the empirical levels of such exposure. The section is intended to impose on the Administrator the burden of determining whether there is a "reasonable likelihood" the substance came from a covered facility and may present a signifant risk. In fullfilling his responsibility to make these central determinations, the Administrator shall use any and all information which is reasonably available to the agency.

The Administrator must respond to any petition within 45 days after he receives it. When he responds, he must set forth either a schedule for reviewing the petition or a schedule for initiating a health assessment. Once any health assessment is initiated, it must be completed within 6 months.

The section would further require that health assessment studies at National Priorities List sites must be completed before completion of the remedial investigation and feasibility study at the site.

The section defines "health assessment study" as a compilation of complete data on: (1) the nature and extent of the comtamination; (2) the existence of the potential pathways of human exposure; (3) the size and potential susceptibility of communities around the facility; (4) comparisons of human exposure levels, and (5) comparisons of existing mortality and morbidity data.

The section would give the ATSDR Administrator authority to conduct pilot and epidemiological studies of health effects for selected groups of individuals; to establish a disease registry for such populations; and to establish a health surveillance program for populations at significant risk.

The section would require that the EPA Administrator provide affected individuals with alternative drinking supplies or relocation if a health assessment study shows a significant risk to their health.

The section provides that all health assessment studies shall be subjected to appropriate peer review and instructs the ATSDR Administrator to prepare and disseminate educational materials to medical personnel. The section would permit the ATSDR Administrator to delegate his authorities under the legislation to states capable to performing them. It also provides that the ATSDR Administrator shall have the same authorities with respect to Federal facilities as he has regarding private facilities.

Finally, the section also provides that the Secretary of Health and Human Services, in consultation with the EPA Administrator, may conduct and support hazardous substance research and training. Such research and training agreements and contracts shall be conducted by an accredited institution of higher education and shall be made under the procedures of the Public Health Service Act and with the assistance of an advisory council. The costs of carrying out the research and training programs shall not exceed $113 million over fiscal years 1986–1990.

SECTION 116

Public participation

The section would require the Administrator or a state (as appropriate, depending on which is conducting the remedial action) to publish a notice and a brief explanation of any proposed plan for remedial action and before such plan is made final and to make such plan available to the public.

The section further states that the Administrator must also provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility involved. The Administrator must keep a transcript of all such meetings and make the transcript available to the public.

If the Administrator rejects significant aspects of comments he receives, he must explain his reason for doing so upon adopting a final plan. The section further provides that if any response action is taken pursuant to a court order or consent decree which differs in significant respects from the final remedial plan adopted by the Administrator, he shall provide public notice and an explanation of such differences. The section defines public notice as including, at a minimum, publication in a major local newspaper of general circulation.

Finally, the section would give the Administrator authority to give technical assistance grants to any group which may be affected by a National Priorities List site. The section would establish a $25,000 cap on such grants, but gives the Administrator authority to waive the cap anytime he believes additional funds are necessary to facilitate public comment at the facility.

SECTION 117

General provisions relating to response under title I

The section states that the Administrator shall not undertake a response action in response to certain types of releases or threatened release unless he determines, in his discretion, that the release or threatened release constitutes a public health or environmental emergency and no other person is available to provide a timely response action. Circumstances covered under this provision include release or threatened release (1) of a naturally occurring substance; (2) from residential dwellings or business or community structues which are not used for the deposition, storage, processing, treatment, transportation or disposal of hazardous substances; (3) into public or private drinking water supply systems due to deterioration of the system through ordinary use; and (4) resulting exclusively from the mining of coal.

The section would require that when the Administrator establishes priorities for the purposes of taking response actions, he shall give high priority to facilities where the release of hazardous substances, pollutants or contaminants has resulted in the closing of drinking water wells or has contanimated a sole or principal drinking water source.

The section would require the Administrator to consider certain factors in adopting an offsite remedy including the long-term uncertainties of land disposal; the goals of the Solid Waste Disposal Act; toxic effects of the substances at issue; and long-term maintenance costs.

Finally, the section states that where a remedial action involves the offsite transportation of hazardous substances, pollutants or contaminants, such substances may only be moved to a facility which is operating in compliance with the Resource Conservation and Recovery Act (RCRA) and which the Administrator has determined is not releasing any hazardous waste into the environment. There is a similar, but different, provision in section 120 of the bill, which also prohibits taking Superfund wastes to facilities which are leaking into groundwater unless the Administrator has authorized a corrective action plan.

SECTION 118

Response action contractors

The section would exempt "response action contractors" from liability under section 106 or 107 of CERCLA, or any other provision of federal or state law, for all costs, damages or any other claims arising out of a release unless the contractor's negligent, reckless or willful misconduct caused the release.

The section limits the coverage of its liability provisions to "response action contractors" who would not otherwise be liable under CERCLA unless they had entered into a contract or agreement to perform a response action.

Finally, the section states that to assure the selection of technically superior response action contractors, no potential bidder shall be denied an opportunity to compete for such contracts. The section further provides that all response action contractors and subcontractors shall be selected in accordance with Title IX of the Federal Property and Administrative Services Act of 1949. In a colloquy between Mr. Florio and Mr. Synar, the author of the amendment which added this provision to the bill, it was made clear that the provision is not intended to affect other provisions of law designed to prevent discrimination on the basis of sex, race or other related factors in the selection of response action contractors.

SECTION 119

Federal facilities

The section would apply all requirements, standards, guidelines, rules, regulations and procedures applicable under CERCLA to facilities owned or operated by the federal government and states that no federal agency or department may adopt provisions which are inconsistent with such rules and regulations.

The section would require any federal agency or department to add to the inventory of federal facilities required under the Solid Waste Disposal Act any facility which affects contiguous or adjacent property owned by any person.

The section would further require the Administrator to establish a special Federal Agency Hazardous Waste Compliance Docket for each federal agency or department which shall contain a complete inventory and information about federal facilities. The docket shall be available for public inspection at reasonable times. Every six months, the Administrator shall publish in the Federal Register a list of the facilities which have been added to the docket.

The section would require the Administrator to evaluate all federal facilities on the docket for possible inclusion on the National Priorities List no later than January 31, 1987. The Administrator would be required to place all federal faciliteis on the National Priorities List within 12 months after they are evaluated if such federal facilities meet the criteria applied to private facilities included on the List. The section also states that upon receiving a petition from the Governor of any state in which a federal facility is located, the Administrator must evaluate any facility included in the Docket.

The section further provides that remedial investigations and feasibility studies for federal facilities included on the National Priorities List must be initiated within 6 months after their placement on the List. Studies for federal facilities already listed must be commenced one year after the date of enactment. Within 180 days after a study is completed, the federal department or agency responsible for the facility must enter into an interagency agreement with the Administrator for completion of remedial action at the facility. The section further provides that substantial, continuous, onsite remedial action must be commenced at each facility not later than 15 months after completion of the remedial investigation and feasibility study.

The section states that the concurrence of the state in which a federal facility is located must be obtained before a remedial action plan is selected for such facility. This important provision, added in an amendment offered by Mr. Richardson and approved by the Committee, is intended to give the states a full and equal partnership with EPA in the process of determining the adequacy of cleanups at federal facility sites.

The section requires all federal agencies and departments to submit annual reports to the Congress concerning their progress in implementing the legislation and requires such agencies to request adequate funding to carry out activities required by the legislation in the President's annual budget. The section would prohibit the Administrator from redelegating any authorities granted to him under the section. It would require that the public participation provisions of the legislation shall apply to remedial actions at federal facilities.

Finally, the section would require the federal government to give notice to any purchaser of land it owns if a federally regulated hazardous substance was disposed of on such land.

SECTION 120

Cleanup standards

1. General standard—protection of human health and the environment

The section would require the Administrator to select appropriate, cost-effective remedial actions which shall be conducted in accordance with the National Contingency Plan and the requirements of the legislation.

The section further provides that any remedial action selected under section 104 of CERCLA (i.e. financed by the fund) or secured under section 106 of CERCLA (i.e. financed in whole or in part by a private responsible party) shall require that level or standard of control for each (and every) hazardous substance, pollutant or contaminant which is necessary to protect human health and the environment.

While we support the policy of applying this general standard to all Superfund remedial actions, the standard's lack of specificity will lead to a continuation of the ad hoc, site-by-site decisionmaking which has consistently undermined the program since its inception. The bill approved by the Committee contains provisions applying the specific standards developed under some of the other major environmental laws to Superfund remedial decisions. As we will explain further below, these specific standards are subject to waivers under the bill. Not only does the bill approved by the Committee contain broad and ill-conceived waivers of these important, specific public health standards, but it also allows EPA to avoid applying the specific standards by failing to define clearly when they are relevant and appropriate. For these reasons, the value of the legislation's general standard is limited in ensuring that a series of adequate, specific and uniform national cleanup standards are established for the Superfund program.

2. Permanent treatment alternatives

The section states that in choosing among various alternatives for remedial action, the Administrator shall "assess" permanent solutions and alternative treatment technologies or resource recovery technologies that will result in a permanent and significant decrease in the toxicity, mobility or volume of the hazardous substance, pollutant or contaminant at issue. In evaluating such technologies, the section says that the Administrator may take into account such factors as a long-term uncertainties associated with land disposal; the goals of the Solid Waste Disposal Act; the persistence of the substances at issue; the risks associated with excavation, transportation and redisposal; potential adverse health effects; and long-term maintenance costs. Following this assessment, the section states that the Administrator shall select—"to the maximum extent practicable."—cost-effective permanent solutions and alternative treatment technologies.

These provisions of the legislation give EPA complete discretion to reject feasible, achievable and widely available permanent treatment technologies in conducting cleanups at Superfund sites. No standard is established for challenging the agency's "assessment" of the cost and environmental factors laid out in the legislation. The language exhorting the Administrator to choose permanent treatment only "to the maximum extent practicable" insulates his decisions in this area from any effective legal challenge or court review. Read together, these provisions amount to little more than the expression of the benign Congressional sentiment that permanent treatment is a good idea which should at least be considered by EPA whenever the agency feels like doing so.

The Committee rejected an amendment that would have required that EPA choose "permanent remedies" at Superfund sites whenever such remedies are "feasible and achievable." The term "permanent remedy" was defined to mean either (1) changes in the character or composition of hazardous substances, pollutants or contaminants so that such substances no longer present a risk to public health or (2) permanent containment of such substances which ensures they will not be released into the environmental at any future time. The term "feasible and achievable" was defined to mean the best method of control of the substance which the Administrator determines has been achieved in practice at similar facilities. The amendment explicitly would have allowed the Administrator to take costs into account in assessing such permanent remedies.

The amendment would have converted the open-ended and discretionary exhortations of the legislation into a binding and meaningful requirement that EPA and the private sector not only search for permanent solutions to Superfund cleanup problems, but apply such solutions whenever they have been achieved in practice in other contexts.

A series of incidents involving the tarnsfer of Superfund wastes to operating landfills which are also leaking large quantities of toxics into the environment have come to the attention of the Committee. These accounts have led to widespread ciriticisms of agency's management of the program by industry, environmental groups and independent institutions such as the General Accounting Office and the Office of Technology Assessment. Such groups have characterized the program as a "shell game" which will only succeed in moving hazardous wastes around the country from one leaking pit to another unless it is fundamentally reformed.

Filling the law with worthy sentiments about the need to "assess" the utility of permanent treatment technologies "to the maximum extent practicable" will not end the Superfund shell game. Unless the law contains meaningful—and binding—requirements that such technologies be used, dollars spent for cleanup now will only need to be duplicated later as short-term remedies invariably fail.

We recognize that it is not possible to legislate the development of such technologies where the scientific knowledge necessary for their implementation does not presently exist. But the Congress must do everything in its power to create incentives in the private sector for adequate resources to be devoted to such research. A meaningless suggestion to EPA regarding the "assessment" of already existing technologies will not spur their further development. Only a binding requirement that the agency use technologies which have been demonstrated in practice will give it and the private sector effective incentives to develop such basic science.

As an important added incentive to the development of permanent treatment technologies, the amendment rejected by the Committee would have required EPA to grant private responsible parties releases from future liability for damages caused by wastes which have been permanently treated. This additional guarantee of certainty regarding their future liability for Superfund sites at which permanent remedies had been implemented would have give private responsible parties both a concrete and a practical reason to assist the agency in developing such remedies.

3. Application of specific standards to onsite remedial actions

The section states that if any standard under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act or the Solid Waste Dispoal Act (including the Resource Conservation and Recovery Act) is "applicable" to the hazardous substance, pollutant or contaminant or is "relevant and appropriate" under the circumstances presented by the release, such standard shall be applied to any remedial action taken onsite. The section further states that the Administrator shall also "consider" any water quality criteria issued under the Clean Water Act but does not require that such criteria by applied.

There are some 200 chemicals commonly found at Superfund sites. The most significant health threat posed by these toxic substances is the contamination of public drinking water supplies. Unfortunately, however, EPA has only managed to set maximum contamination levels for some 14 chemicals under the Safe Drinking Water Act. The only other meaningful sources of agency guidance regarding safe exposure levels for such chemicals are the water quality criteria issued under the Clean Water Act, which cover some 129 additional toxic substances, many of which are found at Superfund sites. Although water quality criteria are not the product of formal rulemaking, they are regularly used to formulate legally binding permit requirements under the Act.

But the bill adopted by the Committees says only that such criteria should be "considered" by EPA. This language give the agency clear discretion to overlook the criteria whenever it pleases, and leaves the agency with clear contamination levels for only 14 chemicals instead of 143.

A second major problem with the bill's provisions regarding the specific health standards developed under other major federal environmental is the undefined use of the terms "relevant and appropriate" as a basis for determining when health standards must be applied. EPA is required to use "applicable" health standards *or* "relevant" and "appropriate" health standards. During the Committee's consideration of the bill, its supporters asserted that "applicable" standards were those that would otherwise apply as a technical legal matter. For example, without any changes in the law, the Resource Conservation and Reovery Act (RCRA) would apply when hazardous wastes are exhumed from a Superfund site and redeposited in the same location.

But there are technical and jurisdictional requirements in many environmental laws which might preclude their application to Superfund remedial actions. For example, the Safe Drinking Water Act only applies to public water supply systems serving a minimum number of households or people and a Superfund site may have contaminated a water system not technically covered by the Act's requirements. Similarly, the Act calls for the measurement of contamination at the tap and thus might be read not to apply to an aquifer contaminated by a Superfund site which might not reach the tap for some months or years.

If Safe Drinking Water Act and other similar requirements are to be effectively utilized in establishing the level of necessary cleanup at Superfund sites, the application of such requirements must be extended beyond the narrow parameters of when they would otherwise apply as a technical legal matter. Unless the scope of these requirements is extended in this fashion, the majority become meaningless as effective uniform standards for the Superfund program. There is no valid purpose to be served in allowing an aquifer which will be used as a drinking water supply to remain contaminated by a Superfund site simply because the toxic substances have not yet poisoned people at the tap.

The bill purports to deal with this critical issue by requiring EPA to apply such requirements whenever they are "relevant" and "appropriate." These vague and unfocused terms are never defined, leaving the agency with broad discretion to pick and choose the standards it wishes to apply to Superfund cleanups. This loophole in the basic coverage of cleanup standards contained in the bill gives EPA inordinate discretion to conduct inadequate cleanups which do not eliminate significant risks to human health and the environment. For example, the agency could use the language to determine that it is neither relevant nor appropriate to apply the standards to the cleanup of a contaminated aquifer because alternative sources of drinking water exist for the short-term. If this approach is attempted, priceless natural resources could be squandered in the name of cleanup.

4. Waivers of public health standards

But perhaps the most important, and fundamental, flaw in the bill's cleanup standards section is the provision permitting EPA to waive the specific cleanup standards applied under other major federal environmental laws in a series of inappropriate and unwarranted circumstances. These circumstances include:

1. An alternative remedial action will provide "substantially" equivalent protection of human health and the environment.

The degree of "substantial" equivalence which must be achieved under this waiver provision is never defined and could be read to justify anything more than fifty percent compliance. An amendment rejected by the Committee would have conditioned the waiver on achievement of "at least" equivalent protection in order to ensure that the standards are not downgraded or ignored because an alternative technology is utilized.

2. Compliance with the standards will result in a greater risk to human health or the environment than alternative options.

3. Compliance with the standards is technically "impracticable" from an engineering perspective.

Once again, the crucial word "impracticable" is never defined and could be read to mean simply that technologies are too expensive to be applied. If the language is read in this manner, this waiver could be used to gut the specific health standards contained in the legislation.

A second problem with this waiver is that it fails to require EPA to make any determination that the technologies necessary to achieve the health standards will not be developed in the forseeable future, thereby allowing the agency to ignore fast-breaking developments in this important field. Waste treatment technologies should proliferate over the next decade, as the land disposal bans required under the Hazardous and Solid Waste Amendments of 1984 come into effect. By allowing EPA to execute only a temporary solution at Superfund sites which fail to meet prevailing health standards, and then delist the site, we will only ensure that such technologies are overlooked. Future generations will then be forced to recreate a new Superfund program as temporary solutions fail and the full implications of renewed contamination are discovered.

4. Compliance would consume a disproportionate share of the fund, taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses of the fund.

This waiver significantly expands the current "fund-balancing" requirement contained in current law in two potentially devastating ways.

First, the provision in current law that the Administrator should consider the resources available in the fund when conducting a remedial action is never directly tied to the achievement of health standards at a site. The provision was originally intended to reflect only the fundamental fiscal reality that you cannot pay for remedies if the fund has run out of money, and therefore EPA at some point may need to defer action at especially expensive sites as the fund's bank account dwindles.

During the regime of Anne Gorsuch Burford and Rita Lavelle, this basic concept was profoundly distorted and "fund-balancing" was used to justify a policy of almost never using the fund to finance remedial action. Instead, Mrs. Burford and Ms. Lavelle pursued a policy of negotiating settlements with private responsible parties in order to "conserve" (or "balance") the fund.

The waiver contained in the bill approved by the Committee gives EPA virtually unlimited discretion. To compound these problems, the bill adds the "size and complexity of the facility" as an additional justification for using fund-balancing to waive health standards. This language is directly aimed at such Superfund sites as Waukegan Harbor in Illinois, New Bedford Harbor in Massachusetts, and the Ashtabula River in Ohio, all of which are extermely large and complex facilities. The language can only be intended to mean that EPA may ignore health standards at such facilities because meeting them would cost too much in relationship to meeting the standards at smaller, less complex and more manageable sites.

5. The remedial action is an interim measure prior to final remedial action at the facility.

Remedial actions at Superfund sites are often complex, multifaceted construction projects which can take two or three years to complete. Once EPA announces that it intends to meet all applicable health standards, it will be difficult to make final determination of the adequacy of the agency's performance until all the remedial work at the site is completed.

The "interim action" waiver included in the Committee bill authorizes EPA to suspend remedial work at any time—before health standards have been met—and avoid any challenge to its actions because, at some indefinite time in the future, the agency plans to complete "final" action at the facility. Merely by labeling an inadequate cleanup as an "interim measure" EPA can avoid a legal challenge to its actions for unlimited periods of time.

No sensible person would sign a construction contract allowing the contractor to suspend work at his whim and avoid being held to the contract because he intended to finish the job eventually. The interim action waiver contained in the bill amounts to a Congressional blank check to the agency that it need never be held accountable for meeting public health standards at any Superfund site.

6. All waivers listed above also apply to remedial actions financed—or conducted—by private responsible parties. In applying such waivers, the section states that EPA shall use the "same considerations" as would be used "with respect to remedial actions financed by the fund."

This last provision, added by Mr. Fields during the Committee's consideration of the bill, not only injects considerations into private party cleanups which are irrevelant but also provides private parties with virtually unlimited litigation opportunities to challenge EPA's remedial action decisions.

Under this waiver, the nation's largest chemical companies could escape liablity for cleaning up to national health standards because they claim that an alternative remedy will achieve 70 percent of (or "substantially") the required protection. Such companies could settle for an inadequate remedy because the technology needed to achieve the standards is too expensive (or "impracticable"). Companies that indiscriminately dumped hazardous wastes into an unlined pit in the ground for years could put a clay cap on the pit and declare "interim measure" complete, without ever having to return to the site in order to prevent toxic sludges from leaching out of the bottom into groundwater.

Perhaps most insidious of all, this provision gives private responsible parties the ability to argue that they should not be required to pay for remedies which meet public health standards because there is not enough money left in the fund to finance a comparable action. Under this language, companies sued for cleanup in the last year of the reauthorized program could ask the court to cut the price of a required remedial action because the fund has run out of money and would not be able to pay for such a remedy.

Before agreeing to any remedy required by EPA, private responsible parties could also demand that the agency justify its ability to finance the action through the fund if the companies refuse to pay for it.

In short, this provision converts the admittedly limited resources of the federal trust fund into the absolute test of a polluter's liability for environmental damage.

EPA has estimated that the total price tag for cleaning up the nation's worst abandoned hazardous waste sites could run as high as $46 billion; the agency further estimates that 50 percent of such cleanups will be financed by private responsible parties with the federal fund absorbing the other half of such costs. GAO has estimated that the federal share of cleanup could run as high as $39 billion, with private parties paying roughly equivalent amounts to complete cleanup. The Office of Technology Assessment estimates the total cleanup price tag at roughly $100 billion, counting both public and private sector contributions to such costs.

By limiting private sector liability to the resources available in the federal fund, the bill ensures that the cleanup effort will take decades to complete. Assuming that private parties are required to contribute no more than $10 billion towards cleanup over the next five years, for example, withthe federal fund contributing an equal amount, it will take close to 15 years to clean up if EPA's estimates are correct; 20 years to finish if GAO's estimates are correct; and 25 years to finish if OTA's estimates are correct.

There is simply no justification for limiting private parties' liability for meeting essential public health standards because the federal trust fund used to supplement their efforts has limited resources.

Supporters of the bill justify this provision on the grounds that it is needed to protect private companies from unreasonable demands by EPA. They contend that unless the agency is forced to justify its actions in this manner, EPA could insist that private parties execute remedies at Superfund sites which are grossly expensive in relationship to the public health benefit which will be achieved. Supporters of the bill assert that the only way to control the agency's indiscretions in this area is to force it to prove it would use the federal trust fund in a similar manner.

We find it both disconcerting and ironic that doubts about EPA's good faith and judgement are used to justify a provision with such potentially devastating implications for the integrity of the Superfund program. The thrust of our objections to the bill in most other areas is that it allows EPA unlimited discretion over the pace and quality of cleanup. With this provision, the bill gives industry unlimited protection from anticipated abuses of such discretion by the agency.

In addition to limiting private parties' liability to the resources available in the federal trust fund, the language in this final provision may also suggest that private parties should have the opportunity to demonstrate whether they have better, more productive uses in mind for their own money, such as investing in air pollution equipment, conducting research on the effects of toxics on human health or even producing public service announcements on the dangers posed by smoking. Intracorporate "fund-balancing" would involve EPA and the courts in a fruitless and ultimately undermining effort to compare the benefits of one unrelated action to another, all on the assumption that Congress intended to limit the liability of private parties to a finite amount of their own internal resources.

5. Standards Applicable to Offsite Remedies

The transfer of wastes removed from Superfund sites to operating landfills which are also leaking toxics into the environment is a problem that continues to plague the Superfund program. A recent survey by the Committee's Oversight and Investigations Subcommittee has documented both EPA's lax enforcement of Resource Conservation and Recovery Act (RCRA) regulations affecting operating land disposal facilities and the agency's frequent use of RCRA facilities which are violating the law for the disposition of Superfund wastes.

In an effort to address this serious problem, the bill would prohibit the transfer of Superfund wastes to RCRA facilities which are not operating in compliance with the requirements of sections 3004 and 3005 of that Act.

Unfortunately, this relatively simple legal prohibition does not resolve the problem of transferring Superfund wastes to leaking landfills because the RCRA program involves a two-stage process for the regulation and permitting of operating hazardous waste disposal facilities. First, the owners and operators of such facilities were granted "interim status" under the law without demonstrating that they have effectively prevented any leakage, or contamination, of the environment. Only in the second stage of the program—which EPA does not intend to fully implement until the end of the decade—will the owners and operators of such facilities be given final permits that require them to guarantee that their facilities are not leaking toxic substances into groundwater, surface water, soil or air.

Because it is not a violation of RCRA Interim status requirements to operate with significant leakage problems, many facilities are experiencing such problems. The bill prohibits the transfer of Superfund wastes to facilities which are already releasing hazardous wastes into groundwater.

While we agree that Superfund wastes should not be transferred to RCRA facilities which are contaminating groundwater, we are unable to determine why the scope of this provision of the legislation does not extend to contamination of surface water, soil and air. The omission of these other media means that EPA could continue to transfer Superfund wastes to RCRA interim status facilities which are know to be leaking significant amounts of hazardous wastes into the environment. This potential loophole in the bill would only exacerbate the agency's current misguided disposal policies.

As we mentioned earlier, a separate provision of the bill, contained in section 117, reflects a more enlightened policy towards the offsite disposal of Superfund wastes by prohibiting the transfer of such wastes to any RCRA facility which is contaminating the environment. The provision in section 117 does not conflict with this provision in section 120, and since the provision in section 117 is of broader applicability it will obviously govern those situations.

6. Application of State health standards

The bill approved by the Committee also attempts to deal with the important issue of when Superfund remedial actions must comply with the health standards imposed under the laws of the state in which the site is located.

As introduced, the bill preempted all such state law requirements. During the Committee's consideration of the bill, Mr. Wirth offered an amendment which would require application of state law requirements unless the EPA Administrator concluded that such standards confer "no significant additional protection of human health and the environment." If the Administrator is unable to make the "no benefit" finding, the costs of complying with state law requirements would be absorbed by the fund in the case of a fund-financed remedial action and by private responsible parties in the case of a Superfund enforcement action. The Wirth amendment would have ensured that states are not permitted to impose meaningless requirements that needlessly "gold-plate" the onsite remedies undertaken at Superfund sites while at the same time ensuring that valid state health standards are met in the course of conducting such cleanups.

Mr. Wirth's amendment was not adopted by the Committee. Instead, an amendment offered by Mr. Tauzin was approved. Under the Tauzin amendment, EPA is given complete discretion to ignore "more stringent" state law requirements when the agency formulates remedial action plans. Although states are permitted to insist that their laws be followed when EPA or private parties undertake onsite cleanups at Superfund sites, the states are required to pay *all* of the costs of meeting such standards, whether the federal fund or private parties are paying for the rest of the cleanup.

Under an amendment to the Tauzin amendment offered by Mr. Florio and approved by the Committee, states are permitted to recoup such costs from private responsible parties under the liability standards applicable to section 107 of current law (i.e. strict, joint and several liability). But the states are still responsible for the costs of meeting their own legal requirements until and unless they can recover such funds.

The implications of the Tauzin amendment for the long-term integrity of state environmntal protection programs are profound. Under the amendment, private parties responsible for sites located in states which have adopted particularly stringent public health standards will have every incentive to get such facilities included on the National Priorities List because the facility's conversion to a Superfund site means the state must pay for cleanup necessary to achieve its own.

The amendment also give EPA every incentive to formulate minimally adequate federal remedies, leaving the states to pay for bringing such remedies up to the levels required under their own public health laws.

Adoption of this amendment would appear to contradict earlier action by the Committee to amend section 104 to ensure that the federal government absorbs 90 percent of the costs of an adequate remedy at Superfund.

Ironically, under an amendment adopted by the Committee, the states may insist on application of their own legal requirements without paying the costs of meeting such state standards when remedial action is taken at a federally owned or operated facility. While we agree that this amendment is a helpful improvement to the bill, it can only serve to underscore the anomalous and senseless policy relected in the bill of forcing states to subsidize the cleanup of private party sites when they are not compelled to pay for compliance with their own laws in the context of federal facilities.

Another amendment adopted by the Committee requires EPA to adopt—in consultation with the states—"functionally equivalent" procedures for the preparation of environmental impact statements regarding Superfund remedial actions if state law would otherwise apply to such situations. While the amendment is helpful in application of state procedural rules guaranteeing in the formulation of Superfund remedial plans, it does not affect the fundamental policy of the bill to waive (or preempt) all state health standards unless the state is willing to pay for such compliance.

7. Value engineering review at Superfund sites

An amendment offered by Mrs. Collins and approved by the Committee would require EPA to secure a value engineering review for all Superfund response actions which will cost more than $4 million. This helpful amendment should help ensure that the agency's assessment of the cost effectiveness of such remedies is based on a careful analysis by engineering experts to develop the best available information regarding the efficient performance of the desired results.

8. Destruction of dioxin wastes

Perhaps in recognition that the cleanup standards contained in the bill contain numerous loopholes, the Committee adopted an amendment to section 120 which gives EPA guidance concerning the cleanup of dioxin wastes. Under this amendment, permanent treatment of such wastes which achieves a destruction efficiency of 99.9999 percent would be encouraged.

The amendment fully reflects the fundamental inadequacies of the bill approved by the Committee. If the cleanup standards contained in the bill were adequate, it would not be necessary for the Congress to include language covering specific wastes about which it is particularly worried. According to the sponsor of the dioxin amendment, the amendment was suggested by firms offering permanent treatment technologies which are capable of meeting the standards the amendment contains. If such firms had any confidence that permanent treatment would be the required remedy whenever it is feasible or achievable, it would not be necessary for them to obtain special recognition of the services they offer in Superfund reauthorization legislation.

SECTION 121

Settlements

The section would authorize the Administrator to enter into a settlement agreement for the performance of any response action with a private responsible party who will conduct such action properly. It would further permit the Administrator to reimburse such parties from the fund for a portion of the costs of such response action.

The section further provides that such settlement agreements may provide that the Administrator will use the fund to reimburse private parties for a portion of responsible costs and that the Administrator's decisions regarding the availability of fund financing shall not be judicially reviewable.

The section provides that the liability of any party under a settlement agreement shall be limited as specified in the agreement. The section states that the legislation does not limit or otherwise affect the authority of any court to review in the consent decree process any limitation on liability contained in an agreement under the settlement provisions of the bill.

The bill's treatment of liability releases was among the most controversial issues debated by the Committee. The legislation's clear intent is to permit EPA to enter into agreements with private responsible parties which release such parties from any future liability for contamination that has not been detected at the time of the agreement. The effect of such "sweetheart deals" would be to force the fund to pay for long-term, unknown pollution for which the private parties are in fact liable. The only opportunity to challenge the potential impact of such open-ended and unjustified liability releases would occur in the so-called "consent decree process." The only parties before the court at that time are the parties who signed the agreement—i.e. EPA and the companies responsible for the site, none of whom would have any incentive to raise the issue of the scope of the release for the court's consideration. In practical effect, the bill would shield all liability releases from any meaningful scrutiny by the courts.

The Committee considered, but rejected, an amendment offered by Mr. Walgren which was designed to eliminate EPA's authority to grant liability releases for future, undetected contamination at Superfund sites. Under the Walgren amendment, no settlement agreement could limit liability arising from conditions at a facility which (1) are "unknown" or "undetected" at the time the agreement is signed; and (2) may "substantially endanger" public health or the environment. The Administrator could only grant a more expansive release from liability if he made a finding that extraordinary circumstances require such a release in order to do justice between the parties and secure the public interest. The Walgren amendment essentially codified EPA's current settlement policy. The rejection of the amendment means, of course, that the agency may revise its policy—on a site specific or a general basis—at any future time.

During the early years of the Superfund program, EPA signed a consent agreement waiving the future liability of private responsible parties for the Seymour Recycling Corporation Superfund site. The "Seymour sweetheart deal" is but one notorious example of the misguided and discredited policy of releasing from any future liability private parties responsible for creating Superfund sites.

The bill reported by the Committee goes much further than simply leaving the issue of whether to grant such open-ended liability releases to the discretion of the agency. The bill would actually take the unprecedented step of immunizing the agency's misguided exercise of such discretion from any effective scrutiny by the courts. Under this language, EPA could decide tomorrow to release a major polluter from all future liability for site cleanup because the polluter agreed to install a fence around the site and remove some empty barrels from its surface. Neither citizens living around the site nor other private parties who are responsible for cleanup at the site would be given the opportunity to challenge the settlement negotiated by EPA.

As for the remaining provisions affecting the scope of Superfund settlement agreements, the section states that the Administrator may take any other action under section 106 of CERCLA against any party which is not a party to the agreement.

The section states that any agreement under section 106 of CERCLA shall be entered as a consent decree under that section and that the Administrator need not make a finding regarding the imminent and substantial endangerment posed by the release.

The section gives the Administrator authority to enter into enforceable agreements to perform investigative work under section 104(b) of CERCLA.

The section states that whenever the Administrator determines a period of negotiation would facilitate an agreement, he shall notify all potentially responsible persons associated with the facility. Such notice shall contain available information concerning the indentity of other notice recipients and the nature and volume of hazardous substances at the facility.

If the Administrator provides notice to responsible parties regarding the possibility of settlement, the section states that he may not bring any action against them under section 104(a) or section 106 of CERCLA for a period of 120 days and under section 104(b) for a period of 90 days. Such person shall have 60 days to make a proposal to the Administrator for undertaking or financing a respose action. If no notice is filed within the 60 day period, the Administrator may commence enforcement action.

The section would give the Administrator authority to enter into covenants not to sue, as part of settlement agreements, and specifies the factors he should consider in assessing such covenants. The section gives the Administrator authority to set aside funds to be used for carrying out future remedial actions in cases where covenants not to sue have been adopted.

Finally, the section would authorize the Administrator to enter into final agreements with persons whose contribution of hazardous substances, or the toxic effects or such substances, were minimal in comparison to other hazardous substances at the facility.

SECTION 122

Reimbursement to local governments

The section would authorize EPA to reimburse local governments for expenses incurred in the course of taking emergency actions in response to the release of hazardous substances, pollutants or contaminants. The reimbursement provided under the section is limited to $25,000 for a single response, with total reimbursement amounts not to exceed 0.1 percent of the Superfund.

SECTION 123

Landfill gas operators

The section would exempt "landfill gas operators" from liability under sections 106 or 107 of CERCLA, or the laws of any state governing the recovery of damages to natural resources and cleanup costs, unless the operator's negligent, reckless or willful misconduct caused the release. The term "landfill gas operator" is defined to mean those who install or operate a system for the recovery or processing of methane froma landfill.

SECTION 124

Section 3001(b)(3)(A)(i) waste

The section, added to the bill is an amendment offered by Mr. Schaefer, would preclude the inclusion of sites containing substantial volumes of fly ash until the Administrator conducts a rulemaking to revise the Hazard Ranking System used to evaluate such facilities. The factors the Administrator must consider in revising the system include the quantity, toxicity and concentrations of hazardous constituents contained in fly ash wastes; the extent of (and potential for) release of such hazardous constitute into the environment; and the degree of risk to human health and the environment posted by such constituents.

The section's prohibition on the listing of fly ash sites amounts to an unjustified special interest exemption for the private parties responsible for such sites. Fly ash, a highly toxic and radioactive substance, contains such dangerous heavy metal pollutants as cadmium, mercury and lead. It is regulated under the Clean Air Act because of the hazards it poses to human health. There is simply no basis in fact to exclude fly ash sites from the List if they meet the criteria applied to sites containing similarly dangerous wastes, and a federal court has held that they do.

The Hazard Ranking System currently used by EPA to evaluate facilities for inclusion on the National Priorities List already incorporates an extensive consideration of each of the factors identified in the legislation. Wastes are evaluated not only on the basis of volume, but also on the basis of toxicity and, more particularly, the concentrations of toxic substances present in the wastes. The section's prohibition on listing fly ash sites until an unnecessary and duplicative rulemaking has been conducted also cannot be justified on the basis of any demonstrated deficiencies in the Hazard Ranking System.

TITLE II—MISCELLANEOUS PROVISIONS

SECTION 201

Post closure

The section would repeal those portions of CERCLA providing for the transfer of liability to the Post-closure Liability Trust Fund. It provides that EPA shall conduct a study of options for a program to serve as an alternative to the fund and report to the Congress the results of such study.

SECTION 202

Natural resource assessment regulations

The section would extend the deadline for promulgation of natural resource damage assessment regulations to six months after the date of enactment.

SECTION 203

Transportation of hazardous materials

The section would amend section 306 of CERCLA, regarding common carrier liability, to apply only to hazardous substances listed and regulated by the Department of Transportation.

SECTION 204

State procedural reforms

The section would apply special rules regarding statutes of limitations to any action brought by an individual in any state court for personal injury or property damages caused by exposure to any hazardous substance, pollutant or contaminant.

The section would revise state statutes of limitation to begin running as of a "federally required commencement date" which is in turn defined as the date the individual knew (or reasonably should have known) that the damages were caused by the hazardous substance pollutant or contaminant concerned.

The section states that its provisions shall apply to any action brought after December 11, 1980.

SECTION 205

Conforming amendment to funding provisions

The section contains a conforming amendment to ensure that the Fund is available only for authorized uses.

SECTION 206

Cleanup of petroleum from leaking underground storage tanks

The section sets forth a series of findings regarding the cleanup of releases of petroleum from leaking underground storage tanks. It then amends section 9003 of the Solid Waste Disposal Act, as follows.

Before the effective date of regulations concerning corrective action for underground storage tanks containing petroleum products, the section would authorize the Administrator to undertake corrective action or require the owner or operator of such tank to undertake corrective action. Funds in the Petroleum Release Response Account of the Hazardous Substance Trust Fund shall be available to the Administrator when he undertakes such corrective action. Under an amendment offered by Mr. Richardson and approved by the Committee, the Administrator would have authority to provide alternative drinking water supplies and temporary or permanent relocation of affected citizens when he undertakes corrective action. EPA would also have authority to assess the health effects of tank releases. These important additions to the corrective action authority contained in the legislation are vital to ensure that such actions address the real needs of communities plagued by such pollution.

Following the effective date of the corrective action regulations, the section states that the Administrator shall undertake corrective action only if no solvent owner or operator can be located, a situation exists which requires prompt response to protect human health or the environment, or the owner or operator has refused to comply with a corrective action order.

The section would allow the Administrator to recover the costs of a fund-financed corrective action from owners or operators. Under an amendment offered by Mr. Tauzin and approved by the Committee, the bill's provisions applying strict, joint and several liability to cost recovery actions were revised to incorporate the liability standards of the Clean Water Act instead of the Superfund law. The Tauzin amendment also would cap the liability of any responsible party for a corrective action at $3 million for each such action, except in cases of gross negligence or willful misconduct. The amendment gives the EPA Administrator authority to either increase or decrease this liability cap following promulgation of financial responsibility regulations under the Hazardous and Solid Waste Amendments of 1984.

The section would permit the Administrator to authorize state to carry out his functions under the legislation.

The section would define "owner" as anyone who owns a property interest in the tank, or who owned a property interest in the tank after November 8, 1984. It would define "operator" as any person who has responsibility for the day-to-day operation of the tank.

The Committee's adoption of the Tauzin amendment converted the petroleum provisions of the legislation into a bail out for major oil companies. The amendment makes no effort to distinguish between individual service station operators and such industrial giants as Exxon or Mobil. The liability of anyone associated with a tank leak—no matter how large the leak, or how many tanks are involved—is limited to $3 million, with the federal trust fund once again serving as a free insurance policy for all additional cleanup costs.

Leaking undergrond gasoline storage tanks have become one of the major environmental hazards facing the nation. They have been identified as one of the most common causes of groundwater pollution in such states as Connecticut, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, California, Colorado and Texas.

According to EPA, experts believe there may be between 75,000 and 100,000 of the nation's 1–2 million underground gasoline storage tanks now leaking, and the number is rising.

Gasoline contamination of water supplies poses extreme hazards to public health because the gas contains such highly toxic and dangerous constituents or additives as benzene, xylene, lead, and ethylene dibromide. While gasoline does not mix readily with water, many of its toxic constituents are water soluble. Where gasoline has percolated through soil to reach groundwater, these chemicals may render an aquifer hazardous for most uses. In fact, EPA has estimated that a leak of as little as half a gallon a day can ruin the drinking supply of 50,000 people.

The costs of cleaning up such leaks vary considerably, depending on the size of the leak and the variety of natural resources (including groundwater) which are affected. An EPA consultant has estimated, however, that in at least five percent of leak cases, the damage is severe, with cleanup costs ranging from $5–12 million. There are numerous reported instances of cleanup costs exceeding this average range, and rising as high as $25–100 million.

The caps on liability contained in the Tauzin amendment do not depend on either the resources of the parties responsible for the leak or the size and scope of the leak itself. Under the amendment, a 200,000 gallon leak from an Exxon tank farm would be treated the same as a 500 gallon leak from a tank owned by an individual service station operator. In both cases, the government could not recover more than $3 million in response costs and the fund would absorb all additional expenses.

Beyond the issue of whether a major oil company's liability should be capped regardless of the size of the leak or the damage it causes, the Tauzin amendment creates major loopholes in the standards which apply to determining such liability in the first instance.

The Clean Water Act, passed in 1972, was the primary federal statute to establish the principle of strict, joint and several liability for environmental damage caused by more than one party. But because the statute was designed to deal with sudden disasters on the high seas, it also created a major exemption from such liability when the damage was caused solely by the acts or omissions of a third party—whether or not the third party had a contractual relationship with the polluter and whether or not the third party acted (or failed to act) in a negligent manner.

When CERCLA (or Superfund) was passed in 1980, Congress carefully reevaluated this open-ended third party defense and made two crucial changes in the scope of its application to toxic contamination of land-based natural resources. First, polluters were not allowed to assert the so-called "third party defense" if they had any contractual relationship with the alleged third party. Second, the defense was limited to cases where the polluter could show he had exercised due care and the problem was caused by the negligent acts of a third party.

The major goal of CERCLA's revision of the third party defense was to prevent polluters from contriving to contract away their liability to third parties with whom they have ongoing business relationships. (For a complete discussion of the legislative history of this provision, see "Strict Liability for Cleanup Costs under Section 311 of the Clean Water Act: Cleaning Up Respondent Superior and Negligence," 10 *Columbia Journal of Environmental Law* at 184–196.) Congress recognized that if polluters were allowed to escape liability in such an easy fashion, they would have little incentive to prevent pollution by their suppliers, franchisees, employees or other third parties with whom they have ongoing relationships which can directly affect the safety of their daily management of toxic substances.

The Tauzin amendment represents a clear effort to turn the clock back to the Clean Water Act's treatment of the third party defense, in the process overriding CERCLA's more sensible treatment of the defense in the case of land-based toxic pollution. The amendment expresses this intention not only through its direct reference to Clean Water Act liability standards, but also through its apparently innocuous reference to the integrity of private contracts: "Nothing in this subsection shall be deemed to affect or modify in any way, contracts or agreements between owners, operators or third parties."

If the Tauzin amendment becomes law, major oil companies could use their market power to compel independent suppliers of gasoline or individual service station operators to sign contracts which stipulate that such "third" parties—and not the major oil company—are fully responsible for any leaks which occur at a facility. In such instances, EPA would be powerless to assert even the limited liability available under the amendment against the major oil company. Further, the contracts could be used as direct evidence of the supplier's or operator's intent to assume liability under state tort law. In short, the Tauzin amendment not only creates a massive liability loophole under federal law but would also create a marketplace climate in which all liability for such damages would be shifted by contract to those with the least commercial power to defend themselves—the small owner, operator or supplier.

During the Committee's consideration of the Tauzin amendment, an alternative proposal was offered by Mr. Richardson which contained genuine protection for small business without creating an unjustified liability exemption for major oil companies. Under the Richardson amendment, the liability of the small owner would have been capped at $5 million per release, while the liability of the operator who is not also the owner would have been capped at $1 million per release.

Mr. Richardson's proposal, which unfortunately was rejected by the Committee, addresses the legitimate concerns of small business without either sacrificing the integrity of the federal fund or creating the massive marketplace disruptions which would accompany the Tauzin amendment's treatment of the third party defense.

SECTION 207

Citizen suits

While the bill contains a section allowing citizen suits in some cases, it does not allow citizen suits against private polluters where EPA and the states are not acting to clean up a site.

The section provides authority for the initiation of citizen suits against the following persons:

> Any person who is alleged to be in violation of any requirement under legislation or current law;
>
> the Administrator of the Environmental Protection Agency where he is alleged to have failed to perform any act or duty which is not discretionary.

The section further states that any citizen suit may be brought in the district court for either the district in which the alleged violation occurred, or the District of Columbia. It provides that the district court shall have jurisdiction, regardless of the amount in controversy or the citizenship of the parties, to (a) enforce such requirement; or (b) order the Administrator to perform such act or duty.

The section states that the plaintiff in any citizen suit must give 60 days of notice of any violation to the EPA Administrator, the state in which the alleged violation occurs, and any alleged violator before commencing the lawsuit. It further provides that no suit may be brought if the Administrator, or the state concerned, has commenced and is diligently prosecuting a similar action.

The section would permit recovery by prevailing or substantially prevailing parties of reasonable attorneys' and expert witness fees, as well as the costs of litigation, and states that the United States, if not a party, may intervene in any citizen suit as a matter of right.

The citizens' suit provisions of the bill approved by the Committee omit a crucial provision which would authorize citizens to sue private parties where there is an imminent and substantial endangerment to public health in order to compel such parties to clean up the facility.

An amendment offered by Mr. Richardson would have restored this crucial component of the legislation's citizens' suit provisions, but the amendment was narrowly defeated.

Under the Richardson amendment, citizens would be precluded from filing suit if either EPA or the states were undertaking cleanup activities at a site, including the performance of preliminary studies necessary to determine the remedial action which should be required. Thus, citizens would only be given the right to sue for cleanup at sites where no federal or state cleanup activities were ongoing.

Close to five years after the Superfund program was first established, EPA has managed to complete cleanup at only six National Priorities List sites and initiate cleanup work at less than ten percent of those now listed. The argument that citizens' suits would interfere with an energetic and well organized cleanup program simply is not supported by the facts.

A recent comprehensive study of citizens' suits brought under the major federal environmental laws which was conducted by the Environment Law Institute at the request of EPA conclusively refutes the argument that such suits interfere with the agency's effective implementation of its statutory mandate.

The study found that the number of citizens' suits filed under major national environmental laws increased in direct response to a decline in EPA's enforcement activities following massive cuts in the agency's budget during the early eighties. The study further found that such suits fulfilled Congressional intent in enacting such provisions by serving as both a goad and an alternative to the agency's own inadequate enforcement efforts. The study dismissed all allegations that such suits interfere with government enforcement programs or are brought against insignificant violators of the law. Finally, the study indicated that the possibility of citizens' suits give industry an added incentive to comply with the law.

In defense of this provision last year, the Chairman of the Committee stated on the House floor:

> I cannot observe why a citizen who might be a neighbor to this facility [and] who might be genuinely concerned about the peril that a dumpsite would impose on him or those who are dear to him, why we would honor an amendment which will strike the ability of that citizen to go in and to address the question in court. The citizen who would go into court under this particular provision must do so to establish that there is an imminent and substantial endangerment to health and the environment.

SECTION 208

Indian tribes

This section adds a definition of "Indian tribes" in section 101 of CERCLA. The section also provides that the requirements for prior assurances from a state that it will pay a share of the costs of remedial action and future maintenance shall not apply to actions on Indian lands; and that in such cases the federal government, instead of the State, shall assure the availability of acceptable facilities to manage any hazardous substance removed from the site. The section also authorizes Indian tribes to recover damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substance. Finally, the section amends certain provisions of CERCLA to afford Indian tribes substantially the same treatment as states.

SECTION 209

Commencement of drilling fluids, etc. study

The section would replace the existing deadline for completion of a study of drilling fluid and other wastes under section 8002(m) of the Solid Waste Disposal Act with the requirement that the Administrator only initiate the study not later than 6 months after enactment of the legislation. The existing deadline for completion of the study under RCRA is October 21, 1982.

We would note that EPA has recently received a notice that a citizens' group—the Trustees for Alaska—intends to file a citizens' suit enforcing the existing deadline contained in the statute. Therefore, the effect of the legislation—if enacted—would be to moot the suit, wipe out the existing deadline, and substantially extend the agency's time for even commencing the study of this important environmental problem.

SECTION 210

Insurability study

The section would require the Administrator to appoint a study group to determine the insurability of private parties' liability for releases of hazardous substances. The group's report must be submitted to the Congress within 18 months after the date of enactment.

SECTION 211

Pollution liability insurance

The section would permit the establishment of risk retention groups to provide pollution liability insurance.

SECTION 212

Releases associated with brine disposal

The section would require the Administrator to conduct a review of the adequacy of all state programs designed to protect public health and the environment in states in which annular injection of brines associated with oil and gas production is permitted. If the review indicates that state programs in this area are not adequate, the Administrator must take action to supplement or improve such programs within 18 months after the date of enactment of the legislation.

TITLE III—COMMUNITY RIGHT-TO-KNOW AND EMERGENCY PLANNING

Subtitle A—Community Right-to-Know

SECTION 301

Basic notification requirements

This section imposes a requirement on owners and operators of facilities at which hazardous chemicals are produced, used, or stored to provide a material safety data sheet to certain state and local officials. This provision is not limited to facility owners and operators who must comply with the material safety data sheet requirements of the Occupational Safety and Health Act Hazard Communication Standard. Instead, it covers all facility owners and operators who produce, use, or store hazardous chemicals regardless of the size of the facility or the amount of the hazardous chemical handled.

The section also requires that such sheets be revised as required by regulations under the Occupational Safety and Health Act and be provided to state and local officials not later than 3 months after such revisions have been made. The section requires that each material safety data sheet contain the same items of information as are required by the regulations of the Occupational Safety and Health Act Hazard Communication Standard.

Unfortunately, the basic notification requirement does not include information that is vital to any effective community right-to-know program—a hazardous chemical inventory. The material safety data sheet provides certain qualitative information about hazardous chemicals, but gives no information regarding the potential dangers associated with that chemical at a particular facility. The public deserves to know about the hazardous chemicals in their communities in order to both prepare for toxic emergencies and to understand the potential chronic health hazards from continuous exposure to hazardous substance emissions into the air, water and ground.

The Committee rejected an amendment that would have required firms handling large quantities of hazardous substances to inform local officials of wastes for each hazardous substance. The amendment would have imposed a minimal burden on business, excluding entirely from its coverage those firms handling less than 6,000 kilograms of a particular hazardous chemical or employing fewer than ten full-time employees. The inventory would have been required biennially, thereby placing a limited paperwork burden on those firms required to comply with the requirement.

The State of New Jersey has had a much more demanding inventory requirement for several years and has indicated that 7,000 covered firms complied with the requirement within 90 days. Their success provides strong evidence that the burden on business would be miminal.

The benefits to local officials and the public would be considerable. With a hazardous chemical inventory, local officials could determine the magnitude of the potential toxic hazard at each facility. They could plan emergency response procedures based on the potential hazards and could efficiently allocate their resources to prepare for the most likely or most dangerous emergency situations. In addition, the emissions and discharge information would allow communities to gauge the potential long-term chronic health effects of toxic chemical releases.

Under the requirements of this bill, communities will learn qualitative information about toxic chemicals, but will not have the quantitative information necessary to use this data effectively. This bill requires communities to prepare emergency response plans and specifically requires that such plans contain the names, phone numbers and emergency response equipment at facilities having "substantial inventories" of hazardous chemicals (sections 311(c)(2)(A) and (D)), but the bill denies these communities the inventory information they need to prepare these required plans.

If Congress intends to open the channel of communication concerning toxic hazards, we should provide communities with the information that is both needed and required under this bill.

SECTION 302

Public availability of material safety data sheets

The section provides that on or before May 1, 1986, the governors of each state shall designate appropriate state and local or regional agencies as recipients of information under this subtitle. The section also provides that these agencies shall make any material safety data sheet available to the public.

Local agencies selected under this section should offer the public the greatest access practicable to the material safety data sheets on file. In addition, the governors should ensure that each affected locality receives the submitted information.

SECTION 303

Availability of material safety data sheets to other owners and operators

The section states that owners and operators who supply hazardous chemicals to other facility owners or operators shall also furnish them with material safety data sheets. The section also requires that these sheets be provided at the time of shipment. The section provides that, with the exception of manufacturers or importers of hazardous chemicals, the requirements of this section and of section 301 relating to basic notification requirements shall not apply to owners and operators who have not received a material safety data sheet. The section further requires the downstream facility owner or operator to make reasonable efforts, and document such efforts to obtain a material safety data sheet by contacting the manufacturer or importer and requesting a copy of the sheet. The downstream facility owner or operator should, in its request, notify the manufacturer or importer that the manufacturer or importer is subject to a civil penalty of $5,000 if it fails to provide the material safety data sheet.

Unfortunately, the requirements of this section lack the enforcement mechanism necessary to make them work because downstream facility owners and operators are not subject to penalties if they fail to request a material safety data sheet from the manufacturer or importer. And, unless the downstream owner or operator possesses the sheet, it need not comply with any of the notification requirements. Thus, it is entirely possible that local communities will not be notified about hazardous chemicals because the downstream facility owner or operator has not received or requested a material safety data sheet from the manufacturer or importer.

SECTION 304

Provision of information to health professionals, doctors, and nurses

The section states that a facility owner or operator shall provide the specific chemical identity of a hazardous chemical to any health professional who requests it in writing as long as the health professional provides a written statement of need and a written ageement of confidentiality. The section requires that the written statement of need state that the health professional has a reasonable basis to suspect that the information is needed for purpose of diagnosis or treatment, that the individuals being diagnosed or treated have been exposed to the substance, and that knowledge of the chemical identity will assist in diagnosis or treatment. The health professional need not be certain about his or her diagnosis or about the individual's exposure to the substance. As long as the professional has rational basis for seeking the information a statement of need should be considered adequate. The section states that a facility owner or operator must promptly provide the chemical identity following such a request. The section also provides that the trade secret provisions of the title do not apply to information requested under this section.

The section further provides that a facility owner and operator must provide a material safety data sheet, including the specific chemical identity, to any treating physician or nurse who requests it if the health professional determines that a medical emergency exists, the chemical identity is necessary for emergency or first-aid diagnosis, the treated individuals have been exposed to the chemical, and knowledge of the chemical identity will assist diagnosis or treatment. The section states that after receiving such a request the owner or operator must immediately provide the requested information. The section further states that the trade secret provisions of the title do not apply to such request and that no confidentiality statement need be provided, although such a statement may be required as soon as circumstances permit.

The section also provides that a facility owner or operator shall provide the specific chemical identity of a hazardous chemical to any health professional employed or contracted by a state or local government who requests such information and provides a written statement of need and a confidentiality agreement. The statement of need must describe why the information is needed in order to assess chemical hazard exposure, to access or conduct atmospheric sampling, to conduct medical surveillance of or provide medical treatment for exposed groups, or to conduct studies to determine health effects of hazardous chemicals.

The section also states that confidentiality agreements may provide for appropriate legal remedies in the event of a breach, including a reasonable pre-estimate of likely damages. However, because the language in this bill is modeled on the provisions of OSHA's Hazard Communication Standard, we understand that such an agreement must not include requirements for the posting of a penalty bond. Such a bond would chill the incentive of health professionals to obtain useful diagnostic information and cannot, therefore, be included in such an agreement.

Subtitle B—Emergency Response

SECTION 311

Emergency response planning

The section provides that the governors of each state shall appoint a Hazardous Substances Emergency Response Commission or designate an existing state-sponsored or appointed emergency response organization to coordinate response planning for hazardous substance emergencies. This language makes it clear that such commissions cannot be corporate-sponsored entities or trade associations.

The Commission shall thereafter designate local Emergency Response Committees to develop plans for their committees. Community representatives shall serve on each Emergency Response Committee. The section requires the Committees to prepare a proposed Emergency Response Plan in consultation with those persons and organizations expected to play a major role in the event of a hazardous substance emergency. Upon the request of a Committee, a facility owner or operator shall provide assistance to the Committee in developing and implementing Emergency Response Plans that affect that owner or operator. The section also requires that the plan be made available for public comment and a hearing and shall be published in final form 20 months after the formation of the Committee.

The section requires that the plan contain the relevant names and emergency telephone numbers, a designation of responsible state and local officials, a description of notification procedures to be used in the event of a hazardous substance emergency, a description of available emergency equipment in the community and at facilities at which substantial inventories are maintained, a description of the measures to take to minimize risks to human health and the environment, evacuation plans, a description of training programs and drills, and an evaluation of available emergency resources.

SECTION 312

Emergency information

The section requires a facility owner or operator to provide immediate notice of a hazardous substances emergency to local officials designated under the Emergency Reponse Plan and such notice shall include as much information as is known to the owner or operator at the time notice is provided. The section further provides that, as soon as practicable, the facility owner or operator shall furnish an emergency bulletin to state and local officials designated to receive such bulletins and they, in turn, shall make such bulletins available to the public.

The section provides that emergency bulletins must contain a full, detailed description of the emergency including the chemical name of the hazardous substance, an estimate of the quantity released, the time and duration of the release, actions taken to respond, and any known or anticipated acute or chronic health risks associated with the emergency. Because the emergency bulletin is designed to fully describe the emergency, the title's trade secret provisions do not apply to emergency bulletins (the trade secret provisions extend only to the section 301 material safety data sheet requirement) and the specific chemical name of the substance released may not be withheld.

Subtitle C—General Provisions

SECTION 321

State and local law

The section provides that nothing in the title shall be construed to limit the ability of any state or locality to require submission of information related to hazardous chemicals. The clear intent of this provision is to protect from preemption all state and local community right-to-know laws and to ensure that the federal community right-to-know program sets a floor, rather than a ceiling for hazardous chemical information. This provision covers all existing and prospective state and local community right-to-know laws and permits such laws to require the submission of additional information relating to hazardous chemicals and to implement the administrative or judicial procedures necessary to carry out these state and local programs.

The only aspects of state and local community right-to-know laws that are preempted under this bill cover the specific form to be used to comply with a state or local material safety data sheet requirement. If a firm prepares the federal material safety data sheet, a state or local material safety data sheet requirement enacted after August 1, 1985 may be satisfied by providing the federal sheet. However, a state or locality can require additional information on separate sheets or through other means to obtain such additional information. Given the overriding intent to preserve state and local community right-to-know laws, this exception should be narrowly construed and should apply only to state and local provisions that specifically call for a "material safety data sheet."

The section also preempts conflicting state or local laws enacted after August 1, 1985 which require a facility owner or operator who supplies a hazardous chemical to any other facility owner or operator to furnish a material safety data sheet to such other facility owner or operator. Such state and local requirements must be identifical to section 303. However, this exception applies only to facility owners or operators who supply hazardous chemicals. A state or locality is not preempted from imposing penalties on those firms receiving hazardous chemicals in order to ensure that they take steps to obtain a material safety data sheet from a manufacturer or importer.

SECTION 322

Enforcement

The section imposes civil penalties not to exceed $20,000 per violation on any person who fails to furnish a material safety data sheet, who fails to provide information to a physician or nurse as required in section 304, who fails to furnish notice or an emergency bulletin or who fails to furnish information withheld under the trade secret provision when requested by the Administrator. Any manufacturer or importer who fails to comply with the requirements of section 303 relating to the transmission of material safety data sheets is liable to the United States for a civil penalty of up of $5,000 for each violation. We understand each violation to be each shipment that does not have the required material safety data sheet.

The section also states that civil penalties shall be collected in an action brought by the United States in a United States district court. The section further empowers the district court to issue orders and take such other action as may be necessary to require a facility owner or operator to turn over information to doctors and nurses in the event of a medical emergency.

SECTION 323

Trade secrets

The section allows any facility owner or operator to withhold the specific chemical identity of a hazardous chemical from a material safety data sheet required under section 301 as long as the information withheld has not been disclosed by the facility owner or operator, is not required to be disclosed to the public by any other federal or state law, and the information withheld gives the facility owner or operator an opportunity to obtain an advantage over competitors. The section also requires the Administrator to promulgate trade secret regulations, consistent with the foregoing criteria, which are identical to the provisions concerning trade secrets in the OSHA Hazard Communication Standard and any revisions promulgated as a result of the ruling of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL-CIO-CLC* v. *Auchter.* It is our understanding that the OSHA regulations will supplement the determinative criteria set forth in the section. If regulations developed by OSHA are in any way inconsistent with these operative criteria, the regulations will not be applicable.

The section also requires the Administrator to establish a procedure to allow any affected citizen to petition the Administrator to review a trade secret claim made by a facility owner or operator under this section and any appropriate United States district court may review the Administrator's determination.

SECTION 324

Definitions

The section defines a "hazardous substance emergency" as a release of a hazardous substance which is unexpected; not continuous and substantially in excess of normal amounts released as a result of routine manufacturing, processing, or storage; or a release in amounts which require notification of the Administrator under CERCLA and which constitutes a substantial threat to public health and environment. The Administrator will promulgate rules and regulations to implement this latter provision.

The purpose of this definition is to provide a trigger for the emergency notification provisions. Once notified of a hazardous substance release, the Emergency Response Committees may assess the need for a response. The determination of an "unexpected" or "not continuous" release is left to the discretion of the plant manager, but his notification obligation is not dependent on whether he believes such a release poses a health danger. That decision is left to the Emergency Response Committee. He is obligated to notify the Emergency Response Committee of the release and the Emergency Response Committee, in turn, determines the appropriate emergency response.

To add an objective standard to the definition of a "hazardous substance emergency," the Committee adopted an amendment that included in the definition of "hazardous substance emergency" releases in amounts which require notification to the Administrator under CERCLA and which constitute a substantial threat to public health and environment. Under section 102 of CERCLA the Administrator is required to promulgate regulations designating reportable quantities of hazardous substances which, when released into the environment, "may present substantial danger to the public health or welfare or the environment." If he fails to issue such regulations, a release of one pound is considered a reportable quantity. At present, approximately one half of the listed 689 hazardous substances have reportable quantities set by the Administrator.

It is our understanding that under this definition, hazardous substance releases which constitute reportable quantities are considered a "hazardous substance emergency" unless the Administrator has not yet established a reportable quantity amount for that substance by determining the consequent impact on public health and the environment. In that event, he shall, by rule or regulation, establish such an amount based on its potential effect on public health and the environment. For each of the 689 hazardous substances for which a reportable quantity has been set by the Administrator, any release in such an amount automatically constitutes a "hazardous substance emergency." Thus, the key to the effective implementation of this provision is that releases of certain predetermined amounts of a hazardous substance automatically trigger the notification requirements of the title.

The section also includes a definition of "hazardous substance" which inexplicably excludes certain highly toxic chemicals. The list of "hazardous substances" in this bill is a subset of the list of chemicals for which a material safety data sheet is required under section 301. The list includes all of the combustible, flammable and reactive substances from the OSHA Hazard Communication Standard. It also includes the substances on the OSHA list which have threshold limit values (TLVs) established by the American Conference of Governmental Industrial Hygienists of 10 parts per million or less or 3 mg per cubic meter or less.

Inexplicably, these TLV limits exclude a substantial number of chemicals which have threshold limit values that are higher than 10 ppm or 3 mg per cubic meter, and are neither flammable, combustible, or reactive. Such toxic substances as malathion, methylene chloride, and trichloroethylene fall into this category of excluded substances. Thus, "unexpected" or "not continuous" releases of such substances would not require notifiation to state and local officials no matter how large the release, because such requirements only apply to releases of "hazardous substances." Mr. Richardson offered an amendment that would have re-included these toxic chemicals, but his amendment was defeated. We object to the use of arbitrary threshold limits that have the effect of excluding a substantial number of toxic chemicals.

James J. Florio.
Bill Richardson.
Ed Markey.
Jim Bates.
Gerry Sikorski.
Henry A. Waxman.
Timothy E. Wirth.
Mickey Leland.
James H. Scheuer.
Barbara A. Mikulski.

ADDITIONAL VIEWS OF CONGRESSMAN THOMAS J. TAUKE ON H.R. 2817

Although I generally support this legislation and I voted for this measure in our committee's deliberations, I do not agree with the corporate tax provisions included in H.R. 2817. This measure contains a broad-based corporate tax to raise much of the money to finance the Superfund program. This tax, in my opinion, cannot be justified by any theory of taxation.

It is not a user tax, because over half of the corporations that will pay this tax do not generate any hazardous waste.

It is not a benefit tax. If society benefits, then the money for Superfund should come from general revenues, not from a new corporate tax.

It is not a pollution tax, although this bill has a pollution tax in the form of a waste-end tax.

This tax, which we have included in this legislation, is simply the most politically expedient way to raise more money to finance the Superfund program.

I believe that it is a very bad precedent for this committee to recommend to the House of Representatives legislation which contains a general tax for a specific purpose. We are setting a dangerous precedent: if you don't think you can do well in the budget process, or if you don't even want to go through that process to appropriate general fund revenues to solve a problem, then you adopt a general tax and put it in a trust fund for a specific purpose. That, in essence, is what we have done in this legislation.

The argument that we have no other easy source of $4.5 billion is not a good reason to institute a new broad-based tax. Our desire to duck a difficult funding question, I fear, will serve as a dangerous precedent in Congress in the years to come.

I do not support this new corporate tax, and I urge my colleagues to carefully review this important funding question.

THOMAS J. TAUKE.

ADDITIONAL VIEWS OF REPRESENTATIVE MICHAEL BILIRAKIS

In 1980, Congress established the Superfund program in order to respond to the dangers presented by hazardous substance spills and leaking hazardous waste dumps. On September 30th of this year, taxing authority for the Superfund program will expire. Therefore, unless a Superfund reauthorization bill is quickly approved by Congress and signed by the President, Superfund and its accomplishments to date could effectively end this fall.

While Superfund has been criticized for ineffectiveness, failure to approve a new reauthorization bill would jeopardize what little accomplishments have been made—as well as what future progress could be achieved in protecting the public from the serious dangers of hazardous waste. I believe this would be a disastrous course for Congress and the nation to follow.

In this regard, I think it is important to remember that the House approved Superfund legislation in 1984 only to see this legislation die at the end of the 98th Congress for failure to reach agreement with the Senate. I voted for the 1984 Superfund legislation, along with many members of this committee and a large majority of the House, but in the end, it could be observed that our votes produced nothing of substance. For all our legislative efforts, we did not provide the means to clean up one additional waste site.

I think this is an important fact to keep in mind as we consider the current reauthorization bill, H.R. 2817. Because it is imperative that a Superfund bill be approved this year, we must be able to formulate a bill which can be approved by both the House and the Senate and signed by the President. We must concentrate on achieving results, and produce a bill which will provide the wherewithal for an effective and efficient cleanup program.

I voted to report H.R. 2817 from committee and I support this bill as a reasonable compromise which is necessary to ensure that the Superfund program does not grind to a halt in September of this year. While H.R. 2817 may not be a "perfect" bill in the eyes of every individual or organization involved in the Superfund debate—I think it is a good bill which deserves further House action and a bill which can serve as the basis for a new Superfund law.

In reviewing this bill, I think it is vital to recognize the broad bipartisan support which H.R. 2817 received at both the subcommittee and full committee level. In the Subcommittee on Commerce, Transportation, and Tourism, six Democracts joined seven Republicans in voting to report H.R. 2817 to the full committee. At the full committee level, where Democrats outnumber Republicans by a margin of 25 to 17, the vote to report H.R. 2817 was 31 to 10.

Such broad support will be necessary to carry Superfund through the full House and to negotiate a final bill with the Senate. Therefore, with respect to H.R. 2817, I believe our committee system has served us well. It has produced a bill which carefully balances important interests and which is focused on the goal of accelerating the cleanup of hazardous waste sites across the country. Such a result is imperative for my home state of Florida, as well as the nation as a whole.

In this regard, during the committee's consideration of H.R. 2817, I contacted Florida state officials, as well as received the concerns of other individuals and groups in Florida, to gain the benefit of their thoughts on this legislation. I also reviewed the written comments of the Florida Department of Environmental Regulation (DER) on the subcommittee version of H.R. 2817 and found myself in agreement with many of their concerns.

Very briefly, the Florida DER supported the cleanup schedules contained in H.R. 2817; objected to the pre-emption of state permitting requirements; supported strict, joint and several cleanup liability; requested reform of waivers from cleanup standards contained in H.R. 2817; and made several comments on the bill's provisions regarding Leaking Underground Storage Tanks.

I carefully reviewed these comments and believe that the final version of H.R. 2817 addresses some the DER's initial criticisms. While the bill does not meet all objections, I believe H.R. 2817, as reported from full committee, is superior to the legislation reported from subcommittee.

For example, I was pleased that H.R. 2817 served to clarify the federal/state cost-sharing arrangement with regard to pumping and treating actions—a procedure vital to the protection of Florida's groundwater. I also received assurances during committee markup that current court decisions were sufficient to impose a standard of strict, joint and several liability in cleanup actions. In addition, the bill establishes an effective cleanup schedule to insure accelerated remedial actions.

However, I remain concerned over several sections of the bill and believe that further amendment of the legislation may be required. In particular, I remain unconvinced that: (1) the legislationi preserves adequate state and local control over cleanup activities; and (2) the new provisions regarding Leaking Underground Storage Tanks (LUST) will be effective.

As to the first matter, I supported adoption of the original Wirth amendment to section 120. This amendment provided, in part, that response actions under section 104 "comply with State requirements, including State standards, state permit requirements, and State requirements regarding the siting of facilities unless the Administrator finds that compliance with such State requirements would provide no significant additional protection of human health and the environment . . ."

During committee consideration of this amendment, debate was framed in terms of "who will pay." It was essentially argued that the amenment would open the door to limitless 90/10 federal/state cost sharing for cleanups determined on the basis of conceivably spurious state requirements.

While cost is certainly an important factor in the Superfund program, I feel that there are other considerations which need to be addressed. In particular, we must not forget that the threat posed by abandoned waste dumps and other hazards remains a matter of intense state and local concern.

As I stated during committee consideration of the Wirth amendment, ". . . we must recognize here in Washington that the individual states have developed substantial expertise in the matter of environmental protection. State laws and regulations are not drawn from the thin air—they are based on a reasoned assessment of the particular environmental concerns of each state."

By adopting the substitute Tauzin amendment to the Wirth amendment (which provides that the Administrator "shall consider" any more stringent State standards, but shall not be bound to follow them) I believe we perpetuate the assumption that states "can't be trusted" to act in a responsible manner. We have made the implicit assumption that federal regulators will, in all cases, develop the most effective remedies and that further state requirements are uninformed and/or unnecessary. Admittedly, the adopted Tauzin amendment provides that states may insist on additional requirements if they are willing to bear the full burden of their cost. However, I feel this approach places states in a position of perpetual disadvantage. Under the adopted amendment, there would seem to be little incentive for the EPA to adopt any state requirements on its own volition. Instead, the "natural" tendency could be for the EPA to always insist that states bear the cost of any regulation which is not in total conformity with federal standards.

Rather than make the assumption that states will act irresponsibly and raid the federal Treasury based on the 90/10 cost sharing formula, I would prefer that Congress err in the opposite direction. I would rather exert subsequent Congressional oversight over a Superfund cleanup program truly localized by the direct involvement of state and local officials, than assume from the start that such a system is fatally flawed.

Under this scenario, if our "worst fears" were confirmed and illogical and irrational cleanup actions occurred due to the incorporation of state requirements, then the basic Superfund law could be amended to provisions similar to the Tauzin amendment. However, we would not be making the initial assumption that such a decentralized system would not work or that it would not produce a Superfund program which responsibly addresses both federal, state and local needs.

As to the second matter of Leaking Underground Storage Tanks (LUST), the Florida Department of Environmental Regulation objected to H.R. 2817's treatment of this widespread health and environmental problem.

In essence, the Florida DER analysis of the LUST provisions argued that liability should not be limited to present owners and operators and that the LUST program be incorporated into Superfund, rather than estabilshed under a separate fund with new RCRA regulations.

During committee consideration of this topic, prime considerations in my mind centered on protection of small business owners and operators from undue liability (possibly leading to uninsurability) and construction of an effective cleanup program which could eliminate the great hazards posed by leaking tanks.

As to the first matter of liability, an amendment adopted in committee limits LUST liability to $3 million, but allows for several exceptions including "willful misconduct or willful negligence." In addition, EPA is also authorized to adjust the $3 million limit and to whom it applies based on the insurance needs of independent petroleum marketers. As to the second matter of effective cleanup, the adopted amendment contains a standard for corrective action "such as may be necessary to protect human health and the environment . . ."

I am hopeful that these provisions, combined with the underlying LUST language, will address some of the concerns of the Florida DER and other state agencies. I believe the concerns of my home state officials are well-taken. They fear that limiting liability to present owners and operators will provide a convenient method by which responsible parties can escape liability for deficient underground tanks, and that the financial burden for cleanup could ultimately be transferred to the public by a program which does not precisely incorporate Superfund standards and regulations.

In this regard, it is my expectation that the committee will exert effective review of the LUST program both before and after new RCRA regulations are promulgated. In particular, the program must be administered in a way that is fair to small station owners and operators—while insuring that large oil companies do not effectively transfer their obligations to the public via H.R. 2817's liability limits and liability cap. From the discussion of the committee during markup of the LUST provisions, this clearly is not the committee's intent. I believe we must be vigilant to ensure that it is not a de facto unintended effect.

Altogether, I believe H.R 2817 represents substantial progress in the federal government's response to the problem of toxic wastes. As with any law, however, H.R. 2817's provisions—if approved by the full House, agreed by the Senate and signed by the President—must be administered properly.

I believe it is the duty of the House Energy and Commerce Committee to fulfill its oversight responsibilities and effectively review the operation of any Superfund reauthorization and new LUST program. I stand ready to participate in the process and see that statements of legislative intent are properly transformed in the operation enacted law.

MICHAEL BILIRAKIS.

SEPARATE AND ADDITIONAL VIEWS—SUPERFUND AMENDMENTS OF 1985 (H.R. 2817)

Apart from the overall concerns about the shortcomings of H.R. 2817 outlined in the broader views we have submitted with a number of our colleagues, two specific Committee positions reflected in the legislation reported merit careful examination. The broad issues of standards, schedules, the standing of citizens to seek action through the federal courts and the adequacy of the community right-to-know provisions all deserve careful and thorough review. Likewise, the Committee's treatment of the issues of the applicability of state laws and standards and the appropriate liability limits for owners and operators of underground storage tanks are matters which carry major public policy implications.

As brought before the full Committee, section 120(g) of H.R. 2817 would have provided for a complete preemption of any applicable federal, state or local law in the instance of a remedial action or abatement action undertaken through sections 104 or 106 when such actions were solely confined to on-site cleanups. These provisions were prompted by agency allegations that many cleanup actions are unnecessarily delayed due to the time necessitated by the application of state permitting requirements—primarily those in regard to procedural processes. Additionally, others argue that the commitment of the fund to meet the actions required by more stringent state standards poses an unfounded financial drain on the limited resources of the fund—leading to so-called "gold-plated" cleanups which serve little purpose in the protection of public health and the environment.

While we are sensitive to the concerns of needless delay in effecting remedial or abatement actions and the need to ensure the maximum return for the expenditure of Fund monies, the preemption advocated under H.R. 2817, unamended, ignores the very legitimate role that state permits play as a regulatory tool for the assurance that adequate responses are developed, implemented and maintained over the life of a cleanup action. In the absence of applicable permits for on-site actions, there is little assurance, for example, that an incineration remedy would comply with applicable air emissions limitations under the Clean Air Act or that a groundwater treatment program would comply with appropriate limitations under the Clean Water Act.

More disturbing, adoption of a policy providing for the preemption of state environmental protection statutes ignores the very premise upon which our joint federal-state efforts to protect our citizens and environment is founded—a premise based on an active partnership. In many circumstances, state standards are crafted to specifically account for the large variations of geology, hydrology, topography and climate which characterize each of the fifty states. State standards, where more stringent than comparable federal standards, are largely developed to account for that variability and provide the specific guidelines necessary to protect the citizens of each of the individual states. To allow for a preemption of state law in the case of on-site actions disavows the very legitimate role that the states have and must continue to play in protecting our citizens from exposure to hazardous wastes. Preemption creates a likely incentive for the development of remedial actions which may unnecessarily bias final decisions towards on-site solutions solely to forego the need for the application of other federal, state, or local permits and standards. Several examples of state permits, standards and laws which would be undercut by H.R. 2817, unamended, are illustrative of that possible bias toward on-site remedies.

At the Perdido Alabama site, the groundwater is contaminated with benzine and requires treatment. EPA has proposed to reinject the treated groundwater back into the aquifer. However, under the state's underground injection law (UIC), there shall be no injection wells delivering into a class I aquifer, such as the one underlying the Perdido site. The federal cleanup proposal is in violation of state law.

The State of Maryland believes that permits are particularly important for sites involving long-term operation and maintenance. Without permits, the state would have little recourse to force responsible parties to fund the long-term maintenance of the site.

Kansas feels that permits are necessary for groundwater protection and to maintain the state ban on land burial of hazardous waste. Onsite enscapsulation of hazardous waste—the most frequent Superfund technology used—is illegal under Kansas state statute. Kansas requires hazardous waste to be detoxified before burial.

The State of Colorado had developed criteria for the location and siting of hazardous waste land disposal facilities considerably more stringent than existing EPA criteria. Current federal criteria focus almost exclusively on engineering design factors and ignore such site-specific considerations as geology addressed by the state's requirements. Colorado's more stringent criteria are specifically designed to prevent today's remedy from becoming tomorrow's Superfund site. That laudatory goal would be undermind by a federal preemption.

During the Committee's consideration of this issue, Mr. Wirth, with the support of the National Governors Association (NGA) and the National Association of Attorneys General (NAAG), offered a substitute proposal to replace the complete preemption provided by H.R. 2817, unamended. That amendment was rejected in favor of an alternative substitute offered by Mr. Tauzin. While both approaches seek to address the concerns of delay and gold-plating which underlie the original position in favor of complete preemption of state laws, significant differences exist between the position advocated by the Wirth amendment and that which was adopted by the Committee.

The Wirth amendment specifically recognized the difference under federal law wherein a state has assumed primacy for the permitting procedures required under numerous federal environmental protection statutes. The Wirth amendment would have allowed states which have assumed primacy the option to waive further permitting requirements with the concurrence of the Administrator—creating the incentive for EPA to obtain complete state concurrence with a proposed action in order to avoid the need for additional permitting processes. The amendment adopted by the Committee ignores the distinction between federal-state permitting responsibilities and maintains the blanket preemption of permits under federal law provided in H.R. 2817, unamended.

The treatment of state permits and standards also differs markedly between the Wirth amendment and the position adopted by the Committee. The Wirth amendment provides that all state laws and standards shall be complied with in all on-site actions taken under either sections 104 or 106. Under 104, fund-financed actions, the Administrator would be granted the authority to waive certain more stringent state standards only in the event of a finding that the application of such standards to the specific action would yield "no significant additional benefit for the protection of public health and the environment". In making such a finding, the Administrator would be directed to take specific local concerns such as geology, hydrology, topography and climate into consideration. Similar treatment is provided in the case of 106 actions, save that the burden of proof that application of the more stringent state requirement responsible party (PRP). In each instance, where the "no benefit" finding is made, the state would retain the option of applying the more stringent standard and would have such incremental costs apportioned to it by the Administrator.

The Tauzin amendment adopted by the Committee seeks to apply the same outcome in relation to the problem of "gold-plated" cleanups. However, the amendment approved by the Committee begins from the presumption that all applicable state standards and requirements should be preempted. The amendment then directs the Administrator to "consider" the more stringent state standard and apply such standards to the proposed action solely at his discretion. Unlike the alternative Wirth proposal, the Tauzin amendment provides for no standard of review in making the determination on the appropriateness of applying the more stringent state standards. The states would then retain the option of financing the more stringent cleanup action in the case of an adverse finding by the Administrator against the state standard. Under a 106 action, a perfecting amendment offered by Mr. Florio to the adopted Tauzin amendment does make it clear that the states retain the option of seeking reimbursement from a PRP for the costs of applying the more stringent state standard. An additional perfecting amendment was adopted which provides that the preemptions provided under the Tauzin amendment do not apply to on-site actions taken at a federal facility.

While the perfecting amendments adopted by the Committee represent an improvement over the total preemption provided in H.R. 2817, unamended, the Committee position remains far short of the necessary protection of state standards, permits and requirements. The presumption that all state standards shall be preempted and then "considered" by the Administrator provides scant assurance that EPA will formulate cleanup plans that will meet the specific needs of the site involved. The Tauzin approach adopted by the Committee creates every incentive for EPA to formulate remedies based solely on the minimal federal standards, with the full knowledge that the states will have to assume the total cost of taking any additional actions necessary to protect their citizens and the environment. The lack of a specific standard for review of state requirements further prejudices such bias in favor of the application of the minimal federal standards.

The treatment of PRPs under 106 actions provided in the Committee position also holds the potential for seriously undermining the real intent of CERCLA—the expeditious cleanup of the most severe hazardous waste sites in the nation. Faced with the possibility of having only to comply with the minimal federal standards for remedy instead of more stringent state standards, the Committee position creates every incentive for a PRP to seek placement of their site on the National Priorities List (NPL). Should the site remain off the NPL, the PRP would be held totally accountable to the more stringent state standards under specific state actions. While the Tauzin amendment, as perfected, makes it clear that the states retain the option to recover the additional costs of compliance with the state standards, the option of lengthy and costly litigation in lieu of adherence to state standards by the PRP at the outset of a remedy is an unnecessary burden on the states.

Finally, we welcome the exclusion of federal facilities from the preemptions provided under the Committee position. However, it is important to note the federal sites represent a small percentage of the thousands of known or suspected sites spread around the nation. further, that specific exemption creates a disturbing double standard under the law.

In stark contrast to the Committee's position favoring preemption of more stringent state standards—a position taken largely from allegations that application of the more stringent standards would create an unnecessary financial drain on the fund—is the position taken by the Committee in the matter of underground storage tanks. While the Committee position in the matter of state standards is alleged to "protect" the fund from unnecessary outlays, the subsequent position taken in the matter of undergound storage tanks holds the potential of creating a serious and unwise commitment of fund monies—precisely the circumstance which the Committee attempted to prevent in the previous instance.

No one would deny that leaking underground storage tanks represent a significant and growing danger to public health and the environment; it is estimated that 75,000 to 100,000 tanks are leaking and polluting the nation's groundwater. The debates in Subcommittee and the full Committee have generally centered on exactly who should be liable for the cleanup of these leaks and whether, given the special nature of the industry, there should be some type of liability caps on cleanup costs. Alternative legislative proposals would have partially removed the petroleum exclusion of Superfund and subjected leaking underground storage tanks to the same liability and corrective action provisions under CERCLA as hazardous waste sites. H.R. 2817, unamended, would have made owners and operators of tanks strictly and jointly liable for the cost of cleanup; neither bill contained liability limits. Both of those approaches present unique and troubling difficulties.

We recognize that significant differences exist between leaking underground storage tanks and hazardous waste dump sites. Tank leaks are usually smaller and less expensive to clean up than hazardous waste dump sites. The structure of the industry complicates ownership determinations but, generally, those responsible for tank leaks and cleanup are easier to identify than those responsible for hazardous waste dumps. Finally, liability insurance is currently available for tank leak cleanup—concern that open-ended liability provisions of either Superfund or RCRA law would dry up liability insurance, particularly for small owners and operators, is well-founded.

A large number of tank owners and operators are small businessmen. The gas station operators, small independent owners and small jobbers are at a significant risk in the event of spills and do not have the financial resources to clean up even small leaks. The availability of insurance could be in question with the enactment of this law; without some protections for small business, we could be condemning many of them to bankruptcy.

For these reasons, Mr. Richardson offered an amendment to H.R. 2817 which would have established caps on liability for owners of eight or fewer facilities and for all operators. This amendment would have placed a five million dollar liability limit on owners and a one million dollar limit on operators. The reason for the difference is clear—operators, while contractually obligated to report indications of leaks, have no control over the basic of remedial actions, the replacement of the tank. It was the intent of the Richardson amendment that through these equitable limits, small businesses would be able to obtain insurance, thereby contributing to clean up, not delaying.

While we support liability limits for the truly small business, we do have serious problems with liability limits for those who do not have problems obtaining insurance, who have resources available to clean up tank leaks and who have well-established tank monitoring and replacement programs. The Slattery/Tauzin amendment to H.R. 2817, which was passed by full Committee, places a liability limit of three million dollars on all tank owners, whether that owner is Exxon or the owner of a single service station.

We have serious concerns with what will result if the Slattery/Tauzin amendment remains in the Superfund bill. This amendment places the fund at risk for any spill in excess of three million dollars; it is estimated that at least five percent of the leaks will cost more than this to clean up—we are essentially obligating the American taxpayer to pay for the large tank leaks of big oil. We have been assured time and again that the major ~~of~~ oil companies have insurance or are self-insured and that their tank programs are exemplary. In a debate that has centered around liability limits, under the assumption that some type of limit will ensure the availability of insurance for those who would otherwise be unable to obtain it, this liability limit for major oil seems unnecessary.

Across-the-board liability limits are not the only shortcomings of the Slattery/Tauzin amendment. We also have grave reservations about the effect of that action to weaken the liability standards for tank cleanup. By using the Section 311 liability standards of the

Clean Water Act, without the modifications found in CERCLA, the liability of owners and operators could be "contracted away", making third parties—not owners or operators—responsible for leaking tanks. At the same time, the Slattery/Tauzin amendment provides liability limits for owners and operators, it extends liability to third parties—and offers them no corresponding liability limits. It is conceivable under the Slattery/Tauzin language, that the manufacturer of a tank or the gasoline distributor could be held liable for a tank leak—without any control over the replacement of the tank, and without the protection of the three million dollar liability limit.

We are pleased that the Committee supported the inclusion of certain corrective action option which could be used by the Administrator in the event of a spill. A major attraction of including tank cleanup under Superfund was that important corrective actions are spelled out in the law—specifically, emergency and permanent relocation, the provision of alternative water supplies and assessments of the impacts to hazardous waste on human health. These provisions are not included in RCRA, nor were they included in the Slattery/Tauzin amendment. We believe that benzene is dangerous to human health whether it comes from a leaking tank or a dump site—and that adequate protections should be afforded all victims of such pollution. We are pleased that the Committee passed the Richardson amendment which would extend these same protections to the victims of leaking tank pollution.

Bill Richardson.
Timothy E. Wirth.

ADDITIONAL VIEWS OF HON. JOHN D. DINGELL

The deliberations on H.R. 2817 were marred by a breach of comity and common decency so serious that comment is, unfortunately, required.

The central issues involved in the enactment of Superfund are very important to the health and safety of the American people, and reasonable men and women may disagree as to the most effective and efficient actions necessary to achieve prompt and thorough clean up of toxic wastes.

For example, it is my belief based upon the exhaustive investigation conducted by the Oversight and Investigations Subcommittee—an investigation that resulted in the removal of EPA head Anne Burford along with most of her key lieutenants and in the imprisonment of Rita Lavelle, who ran the toxic waste clean up program—that excessively rigid clean up schedules are self defeating and actually encourage the kind of misfeasance and malfeasance that has crippled the Superfund program to date.

Others reading the same evidence honestly feel that without extremely rigid schedules, EPA will not proceed with the vigor and commitment that is necessary.

While individuals may disagree on this point, responsible people recognize that each point of view is based upon a sincere desire to create the very best possible program to protect the health and welfare of the American people.

The debate on such issues should be vigorous because the issues are important, but if the debate sinks to the level of vindictive distortion of fact and malicious personal attacks, the process itself is demeaned and the legitimate and serious concerns of the American people are damaged.

In the debate over Superfund, most of the participants fought hard and fought well for their positions. But they did so with respect for the integrity of their opponents and they did so by accurately portraying the differences and vigorously propounding their point of view.

Regrettably, representatives of two organizations that had in previous battles earned the respect of the American people for their courageous and energetic advocacy of environmental issues, abandoned decency and integrity. The Washington representatives of the Sierra Club and the National Audubon Society engaged in vicious, irresponsible and dishonest personal attacks upon individual Members of Congress with whom they disagreed. They deliberately distorted the provisions of legislative proposals with which they disagreed. In doing so, these two representatives brought discredit upon their cause, damaged the interests of their own constituencies and may have weakened the national effort to clean up toxic wastes, which they ostensibly sought to strengthen. They did this in spite of the fact that all Committee Members sought to work with them and the Committee actually dealt with 7 of the 11 concerns they expressed over the legislation.

Members of the House should know that a majority of Members of the Committee on Energy and Commerce from both sides of the aisle refused to be influenced by these tactics and adopted the landmark Superfund legislation by the overwhelming majority of 31 to 10, with one Member passing. It should not be inferred from this statement that the ten Members who voted against the bill were bowing to pressure from the Washington representatives of the Sierra Club and the National Audubon Society. Many made it clear in statements at the time of passage that they respected the efforts and integrity of the majority, but sought to change the program to achieve what they felt to be needed improvements. The majority disagreed with their proposals, but respected the integrity and sincerity of their position.

JOHN D. DINGELL.

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99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 99-253
Part 2

SUPERFUND AMENDMENTS OF 1985

OCTOBER 28, 1985.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2817 which on June 20, 1985, was divided and referred to the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on Ways and Means; which on August 1, 1985, was reported by the Committee on Energy and Commerce (H. Rep. 99-253, Part 1); and which on August 1, 1985, was also referred to the Committee on the Judiciary and the Committee on Merchant Marine and Fisheries] [1]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out title IV of the bill and insert in lieu thereof the following:

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[1] The Committee on Merchant Marine and Fisheries approved the bill with amendments on October 1, 1985; the Committee on the Judiciary approved the bill with amendments on October 8, 1985; and the Committee on Public Works and Transportation approved the bill with amendments on October 10, 1985.

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TITLE IV—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954

SEC. 401. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This title may be cited as the "Superfund Revenue Act of 1985".

(b) Table of Contents.—

Sec. 401. Short title; table of contents.

Part I—Superfund and its Revenue Sources

Sec. 411. Extension of environmental taxes.
Sec. 412. Increase in tax on petroleum.
Sec. 413. Increase in tax on certain chemicals.
Sec. 414. Repeal of post-closure tax and trust fund.
Sec. 415. Waste management tax.
Sec. 416. Tax on certain imported substances derived from taxable chemicals.
Sec. 417. Imposition of superfund excise tax.
Sec. 418. Hazardous Substance Superfund.

Part II—Leaking Underground Storage Tank Trust Fund and its Revenue Sources

Sec. 421. Additional tax on gasoline, diesel fuel, and special motor fuels.
Sec. 422. Leaking Underground Storage Tank Trust Fund.

Part III—Oil Spill Liability Trust Fund and Its Revenue Sources

Sec. 431. Increase in environmental tax on petroleum.
Sec. 432. Oil Spill Liability Trust Fund.

Part IV—Studies

Sec. 441. Study of impact of waste management tax on domestic manufacturers.
Sec. 442. Study of lead poisoning.

Part V—Coordination With Other Provisions of This Act

Sec. 451. Coordination.

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 411. EXTENSION OF ENVIRONMENTAL TAXES.

(a) In General.—Subsection (d) of section 4611 of the Internal Revenue Code of 1954 (relating to termination) is amended to read as follows:

"(d) Application of Taxes.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(b) Technical Amendment.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 412. INCREASE IN TAX ON PETROLEUM.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "3.85 cents".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 413. INCREASE IN TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX; LEAD ADDED AS TAXABLE CHEMICAL.—Subsection (b) of section 4661 of the Internal Revenue Code of 1954 (relating to amount of tax imposed on certain chemicals) is amended by striking out the table contained in such subsection and inserting in lieu thereof the following:

"In the case of:	The tax (before any inflation adjustment) is the following amount per ton:
Organic substances	
Acetylene	$4.74
Benzene	4.74
Butadiene	4.74
Butane	4.74
Butylene	4.74
Ethylene	4.47
Methane	3.35
Napthalene	4.74
Propylene	4.74
Toluene	4.74
Xylene	9.68
Inorganic substances	
Ammonia	3.52
Antimony	4.33
Antimony trioxide	4.13
Arsenic	4.33
Arsenic trioxide	3.92
Barium sulfide	3.49
Bromine	4.33
Cadmium	4.33
Chlorine	3.40
Chromite	1.48
Chromium	4.33
Cobalt	4.33
Cupric oxide	4.00
Cupric sulfate	3.32
Cuprous oxide	4.15
Hydrochloric acid	0.83
Hydrogen fluoride	4.25
Lead	2.47
Lead Oxide	4.21
Mercury	4.33
Nickel	4.33
Nitric acid	2.36
Phosphorous	4.33
Potassium dichromate	3.25
Potassium hydroxide	2.67
Sodium dichromate	3.32
Sodium hydroxide	2.27
Stannic chloride	3.42
Stannous chloride	3.70
Sulfuric acid	0.70
Zinc chloride	3.46
Zinc sulfate	3.33."

(b) **Inflation Adjustments in Amount of Tax.**—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) **Inflation Adjustments in Amount of Tax.**—

"(1) **In general.**—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) **Applicable inflation adjustment.**—

"(A) **In general.**—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for 1985.

"(B) **Applicable price index.**—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(3) **Rounding.**—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of ½ of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(c) **Exemption for Exports of Taxable Chemicals.**—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) **Exemption for Exports of Taxable Chemicals.**—

"(1) **Tax-free sales.**—

"(A) **In general.**—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) **Proof of export required.**—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) **Credit or refund where tax paid.**—

"(A) **In general.**—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(d) SPECIAL RULES FOR CERTAIN CHEMICALS.—

(1) REPEAL OF EXEMPTION FOR CHEMICALS DERIVED FROM COAL.—

(A) Section 4662(b) of such Code (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) of such Code is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) EXEMPTION FOR LEAD HAVING TRANSITORY PRESENCE DURING EXTRACTING PROCESS.—Clause (i) of section 4662(b)(5)(B) of such Code (relating to substance having transitory presence during extracting process), as redesignated by paragraph (1), is amended by inserting "lead," before "lead oxide".

(3) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(4) Special rule for nitric acid used in production of nitrocellulose.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) Special rule for nitric acid used in production of nitrocellulose.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(e) Exemption for Certain Recycled Chemicals.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) Recycled chromium, cobalt, nickel, and lead.—

"(A) In general.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) Exemption not to apply while corrective action uncompleted.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) Required corrective action.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) Solid waste.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(f) Exemption for Animal Feed Substances.—

(1) In general.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) Substances used in the production of animal feed.—

"(A) In general.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) Qualified animal feed substance.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) Qualified animal feed use.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) Refund or credit for substances used in the production of animal feed.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) Use in the production of animal feed.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(g) Certain Exchanges by Taxpayers Not Treated as Sales.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) Use and Certain Exchanges by Manufacturer, Etc.—

"(1) Use treated as sale.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) Special rules for inventory exchanges.—

"(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on November 1, 1985.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1985.

SEC. 414. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1954 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 415. WASTE MANAGEMENT TAX.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 (as amended by section 414 of this Act) is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Hazardous Waste Management Tax

"Sec. 4671. Waste management tax.
"Sec. 4672. Exemptions; reduction of tax where prior taxable event.
"Sec. 4673. Special rules for waste water treatment, incineration, etc.
"Sec. 4674. Backup tax on generator.
"Sec. 4675. Definitions and special rules.

"SEC. 4671. WASTE MANAGEMENT TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on—

"(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

"(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

"(3) the exportation of hazardous waste from the United States.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

"For calendar year:	If the taxable event is: Land Disposal	Any Other Taxable Event
	The tax per ton is:	
1986	$27.00	$2.70
1987	30.00	3.00
1988	31.00	3.00
1989	36.00	3.00
1990	43.00	3.00.

"(2) DEFINITIONS RELATING TO AMOUNT OF TAX.—For definition of—

"(A) hazardous waste, see section 4675(a)(1), and

"(B) land disposal and any other taxable event, see section 4675(a)(5).

"(c) LIABILITY FOR TAX.—

"(1) WASTE RECEIVED AT MANAGEMENT UNITS.—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

"(2) WASTE RECEIVED FOR TRANSPORT FROM THE UNITED STATES.—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

"(3) WASTE EXPORTED.—The tax imposed by subsection (a)(3) shall be paid by the exporter.

"(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

"(a) EXEMPTION FOR CERTAIN REMOVAL AND REMEDIAL ACTIONS, ETC.—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

"(1) a corrective action specified in—

"(A) an initial or final order, or

"(B) a proposed or final permit,

issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

"(2) a proposed or final closure plan approved by the Administrator or such a State,

"(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

"(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980.

"(b) EXEMPTION FOR WASTE RECEIVED AT ANY FEDERAL FACILITY.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

"(c) REDUCTION IN TAX WHERE PRIOR TAXABLE EVENT.—

"(1) IN GENERAL.—If—

"(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

"(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the 'later taxable event'),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount of the reduction determined under this paragraph is the product of—

"(A) the weight of hazardous waste involved in the later taxable event, multiplied by

"(B) the lesser of—

"(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

"(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

"SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION, ETC.

"(a) EXEMPTION FOR WASTE RECEIVED AT CERTAIN WASTE WATER TREATMENT UNITS.—The tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

"(b) INCINERATION, ETC. WITHIN 90 DAYS OF RECEIPT.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

"(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) EQUIVALENT OF INCINERATION.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

"(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

"(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

"(c) Qualified Chemical Fuels or Solvents.—

"(1) In general.—Under regulations prescribed by the Secretary, if—

"(A) tax under section 4671 was paid with respect to any hazardous waste,

"(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

"(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(2) Qualified chemical fuel or solvent.—For purposes of subparagraph (A), the term 'qualified chemical fuel or solvent' means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

"(d) Recycling of Batteries.—Under regulations prescribed by the Secretary, if—

"(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

"(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

"(e) Tax To Apply While Corrective Action Not Completed.—

"(1) In general.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

"(2) Required corrective action.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

"(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

"(B) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(3) Rate of tax with respect to waste water treatment.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be 15 cents per ton.

"SEC. 4674. BACKUP TAX ON GENERATOR.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

"(1) received at a qualified hazardous waste management unit,

"(2) received for transport from the United States for the purpose of ocean disposal, or

"(3) exported from the United States.

"(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

"(d) EXEMPTIONS.—

"(1) SMALL GENERATORS.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

"(2) WASTE LEGALLY DISPOSED OF IN PUBLICLY OWNED TREATMENT WORKS.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

"(3) OTHER EXEMPTIONS TO APPLY.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

"(4) EXEMPTIONS UNDER REGULATIONS; APPLICATION OF LOWER RATE.—The Secretary may prescribe regulations which provide exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

"(e) GENERATOR.—For purposes of this section, the term 'generator' means the person whose act or process produces the hazardous waste.

"(f) TERMINATION.—No tax shall be imposed by this section on waste generated after September 30, 1990.

"SEC. 4675. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

"(2) QUALIFIED HAZARDOUS WASTE MANAGEMENT UNIT.—The term 'qualified hazardous waste management unit' means the specified area of land or structure—

"(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

"(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

"(3) QUALIFIED HAZARDOUS WASTE MANAGEMENT FACILITY.—The term 'qualified hazardous waste management facility' means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or is accorded interim status under—

"(A) section 3005 of the Solid Waste Disposal Act, or

"(B) a State program authorized under section 3006 of such Act.

"(4) OCEAN DISPOSAL.—The term 'ocean disposal' means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

"(5) DEFINITIONS RELATING TO AMOUNT OF TAX.—

"(A) LAND DISPOSAL.—The term 'land disposal' means a taxable event described in section 4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

"(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms 'landfill', 'surface impoundment', 'waste pile' and 'land treatment unit' have the respective meanings given such terms in regulations prescribed by the Administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

"(C) OTHER TAXABLE EVENT.—The term 'any other taxable event' means—

"(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

"(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

"(6) WASTE WATER TREATMENT UNIT.—The term 'waste water treatment unit' means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

"(A) for which a permit is required under section 402 of the Clean Water Act,

"(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

"(C) which is a zero discharge treatment system—

"(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

"(ii) which, if the system discharged into a publicly owned treatment works, would comply with the pretreatment standards described in subparagraph (B), or

"(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term 'waste water treatment unit' shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

"(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(9) TON.—The term 'ton' means 2,000 pounds.

"(10) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

"(b) TREATMENT OF CONTAINERS, ETC. WHICH ARE RELATED TO INJECTION UNITS.—For purposes of this subchapter—

"(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

"(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsection (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter."

(b) INFORMATION REPORTING REQUIREMENT.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after section 6039D the following new section:

"SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental Protection Agency under the Solid Waste Disposal Act. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter."

(2) PENALTY.—Subchapter B of chapter 68 of such Code (relating to assessable penalties) is amended by redesignating section 6708 (relating to mortgage credit certificates) as section 6709 and by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

"(a) IN GENERAL.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

"(b) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty provided by law."

(3) CONFORMING AMENDMENTS.—

(A) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039D the following new item:

"Sec. 6039E. Information with respect to management tax on hazardous waste."

(B) The table of sections for subchapter B of chapter 68 of such Code is amended by redesignating the item relating to mortgage credit certificates as section 6709 and by adding at the end thereof the following new item:

"Sec. 6710. Failure to provide information with respect to management tax on hazardous waste."

(c) PENALTY FOR NEGLIGENCE TO APPLY TO ENVIRONMENTAL TAXES.—Section 6653 of such Code (relating to failure to pay tax) is amended by adding at the end thereof the following new subsection:

"(i) NEGLIGENCE PENALTY TO APPLY TO ENVIRONMENTAL TAXES.—For purposes of applying paragraphs (1) and (2) of subsection (a), paragraph (1) of subsection (a) shall be treated as including a reference to underpayments (as defined in subsection (c)) of tax imposed by chapter 38 (relating to environmental taxes)."

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Hazardous waste management tax."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1986.

(2) BACKUP TAX ON GENERATOR.—Section 4674 of the Internal Revenue Code of 1954 (relating to backup tax on generator), as added by this section, shall apply to waste generated after December 31, 1986.

SEC. 416. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter C the following new subchapter:

"Subchapter D—Tax on Certain Imported Substances

"Sec. 4677. Imposition of tax.
"Sec. 4678. Definitions and special rules.

"SEC. 4677. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) In general.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) Rate where importer does not furnish information to secretary.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) Exemptions for Substances Taxed Under Sections 4611 and 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) Termination.—The taxes imposed by this section shall not apply after September 30, 1990.

"SEC. 4678. DEFINITIONS AND SPECIAL RULES.

"(a) Taxable Substance.—For purposes of this subchapter—

"(1) In general.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) Determination of substances on list.—A substance shall be listed under paragraph (1) if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) Modifications to list.—The Secretary may add or remove substances from the list under paragraph (2) as necessary to carry out the purposes of this subchapter.

"(b) Other Definitions.—For purposes of this subchapter—

"(1) Importer.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) Taxable chemicals; united states.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) Disposition of Revenues From Puerto Rico and the Virgin Islands.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter C the following new item:

"Subchapter D. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 417. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Chapter 38 of the Internal Revenue Code of 1954 is amended by adding after subchapter D the following new subchapter:

"Subchapter E—Superfund Excise Tax

"Part I. Imposition of tax.
"Part II. Taxable transaction.
"Part III. Taxable amount; exempt transactions; credit against tax.
"Part IV. Administration.
"Part V. Definitions; special rules.

"PART I—IMPOSITION OF TAX

"Sec. 4681. Imposition of tax.
"Sec. 4682. Termination.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this subchapter, the amount of the tax shall be .08 percent of the taxable amount.

"SEC. 4682. TERMINATION.

"(a) IN GENERAL.—No tax shall be imposed under section 4681 after December 31, 1990.

"(b) TERMINATION IF $10,000,000,000 OF SUPERFUND TAXES COLLECTED.—

"(1) ESTIMATES BY THE SECRETARY.—The Secretary as of the close of each calendar quarter shall make an estimate of the aggregate amount appropriated or credited to the Hazardous Substance Superfund (other than by reason of paragraphs (3), (4), and (5) of section 9505(b)) during the period beginning on November 1, 1985, and ending on September 30, 1990.

"(2) TERMINATION IF $10,000,000,000 CREDITED BEFORE SEPTEMBER 30, 1990.—If the Secretary estimates under paragraph (1) that more than $10,000,000,000 of the amount referred to in paragraph (1) will be credited to the Fund as of the close of any calendar quarter before September 30, 1990, no tax shall be imposed under section 4681 after such quarter.

"(c) PROCEDURES FOR TERMINATION.—

"(1) PRORATION OVER TAXABLE PERIOD.—In the case of any taxable period which begins before and ends after the termination date determined under subsection (a) or (b), the tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) (and the credit allowable under section 4687) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

"(A) the number of days in such taxable period up to and including the date of termination, bears to

"(B) the number of days in such taxable period.

"(2) TAX ON IMPORTS.—The tax imposed by section 4681 on taxable transactions described in paragraph (2) of section 4683(a) shall not apply to property imported after the termination date determined under subsection (a) or (b).

"(3) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"PART II TAXABLE TRANSACTION

"Sec. 4683. Taxable transaction.
"Sec. 4684. Taxable person.

"SEC. 4683. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this subchapter except as otherwise provided in this subchapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—

"For exempt transactions, see section 4686.

"SEC. 4684. TAXABLE PERSON.

"(a) GENERAL RULE.—Except as otherwise provided in this subchapter, for purposes of this subchapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4683(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4683(a), the importer of the tangible personal property.

"(b) GOVERNMENT ENTITIES AND EXEMPT ORGANIZATIONS NOT TAXABLE PERSONS.—For purposes of this subchapter, the term 'taxable person' shall not include—

"(1) the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of the foregoing, and

"(2) any organization which is exempt from taxation under chapter 1 by reason of section 501(a); except that this paragraph shall not apply with respect to any transaction which is part of an unrelated trade or business (within the meaning of section 513) of such organization.

“PART II—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX

“Sec. 4685. Taxable amount.
“Sec. 4686. Exempt transactions.
“Sec. 4687. Credit against tax on sales and leases.

“SEC. 4685. TAXABLE AMOUNT.

“(a) SALE.—For purposes of this subchapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

“(1) including items payable to the seller with respect to such transaction, but

“(2) excluding the tax imposed by section 4681 or chapter 32 with respect to such transaction.

“(b) IMPORTS.—For purposes of this subchapter, the taxable amount in the case of any import shall be the sum of—

“(1) the customs value, plus

“(2) customs duties and any other duties which may be imposed.

If there is no such customs value, fair market value (determined in a manner similar to the determination of customs value) shall be substituted for customs value in paragraph (1).

“(c) LEASES.—For purposes of this subchapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

“(d) CONTAINERS, PACKING, AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing, and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

“(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

“(1) SALES.—In the case of a sale of any tangible personal property where the consideration is received by the seller in more than 1 taxable period—

“(A) in the case of the seller, the taxable amount for each such taxable period shall be the portion of the taxable amount received during such period, and

“(B) in the case of the buyer, the cost of such property shall be taken into account for purposes of determining qualified inventory costs only when paid.

“(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each taxable period shall include the gross lease payments received by the taxable person during such taxable period.

“SEC. 4686. EXEMPT TRANSACTIONS.

“(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4681 on any tangible personal property imported into the United States as part of a shipment (within the meaning of section

498(a)(1) of the Tariff Act of 1930; 19 U.S.C. 1498(a)(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) **Exports**.—Under regulations, no tax shall be imposed under section 4681 on the sale of any property which is to be exported from the United States.

"(c) **Certain Exempt Products**.—

"(1) **In general**.—In the case of any exempt product—

"(A) no tax shall be imposed by section 4681 with respect to such product, and

"(B) any qualified inventory costs allocable to such product shall not be taken into account under section 4687.

"(2) **Exempt product**.—For purposes of this section—

"(A) **In general**.—The term 'exempt product' means—

"(i) any food product,

"(ii) any unprocessed agricultural or fishery product,

"(iii) any unprocessed timber, and

"(iv) any fertilizer product.

"(B) **Food product**.—The term 'food product' means—

"(i) any food or nonalcoholic drink for humans or animals, and

"(ii) any material, component, or packaging of such a food or drink.

"(C) **Fertilizer product**.—The term 'fertilizer product' means—

"(i) any product to be used as a fertilizer, and

"(ii) any material, component, or packaging of such a product.

"SEC. 4687. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) **General Rule**.—There shall be allowed as a credit against the tax imposed by section 4681 for any taxable period on taxable transactions described in paragraph (1) of section 4683(a) an amount equal to the greater of—

"(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) $8,000.

"(b) **Limitation Based on Tax Liability; Carryforward of Excess Credit**.—

"(1) **Limitation based on amount of tax**.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) for such period.

"(2) **Carryforward of excess credit**.—If the credit allowable under subsection (a)(1) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a)(1) for such succeeding taxable period.

"(c) **Qualified Inventory Costs**.—For purposes of this subchapter—

"(1) **In general**.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—If any portion of an allowance for depreciation or amortization with respect to any property would be allocable to the inventory of a manufacturer under the full absorption method of accounting, a like portion of the cost of such property shall be included in the qualified inventory costs of the taxpayer for the taxable period in which such property is placed in service. Treatment under the preceding sentence shall be in lieu of any allowance for depreciation or amortization.

"(B) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

"(d) CARRYFORWARD NOT ALLOWED FOR COSTS DURING PERIODS FOR WHICH RETURN NOT FILED.—

"(1) IN GENERAL.—In determining the amount allowable as a carryforward under subsection (b)(2), the qualified inventory costs of the taxable person during any taxable period shall be taken into account only if such person files a timely return (determined with regard to extensions) of the tax imposed by section 4681 for such period.

"(2) BASIS ADJUSTMENT FOR INCOME TAX PURPOSES.—For purposes of subtitle A, if the cost of any property is taken into account in determining the amount of the qualified inventory costs of the taxable person for any taxable period, the adjusted basis of such property shall be reduced by an amount equal to .08 percent of the qualified inventory costs of the taxpayer attributable to such property.

"PART IV—ADMINISTRATION

"Sec. 4688. Liability for tax.
"Sec. 4689. Return requirement; taxable period; depositary requirements.
"Sec. 4690. Regulations.

"SEC. 4688. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4681.

"SEC. 4689. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4681 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if no return of tax is required under chapter 1—

"(i) April 15 in the case of a taxpayer other than a corporation, and

"(ii) March 15 in the case of a corporation,

including extensions granted for purposes of this subchapter.

"(2) Exception for taxable transactions of $10,000,000 or less.—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4683(a) if the aggregate taxable amount for such transactions is $10,000,000 or less. For purposes of the preceding sentence, there shall not be taken into account any transaction exempt from the tax imposed by section 4681 by reason of secton 4686(c).

"(3) Other exceptions.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) Taxable period.—For purposes of this subchapter, the term 'taxable period' means—

"(1) the taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) Depositary Requirements.—

"(1) In general.—In the case of any person with respect to whom a tax is imposed under section 4681 for any taxable period on any taxable transaction described in paragraph (1) of section 4683(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) Special rule for 1st taxable period.—Notwithstanding paragraph (1), a deposit shall be required for the 1st taxable period of any taxable person to which this subchapter applies if the gross receipts of such person during the 1st taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4690. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.

"PART V—DEFINITIONS; SPECIAL RULES

"Sec. 4691. Definitions; special rules.

"SEC. 4691. DEFINITIONS; SPECIAL RULES.

"(a) Manufacturer.—For purposes of this subchapter—

"(1) In general.—The term 'manufacturer' includes any producer of tangible personal property (including raw materials).

"(2) Certain activities not taken into account.—A person shall not be treated as a manufacturer with respect to any property merely by reason of—

"(A) furnishing services incidental to the storage or transportation of such property, or

"(B) incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of the $8,000 amount specified in section 4687(a)(2), the $10,000,000 amount specified in section 4689(a)(2), and the $50,000,000 amount specified in section 4689(c)(2).

"(2) ALLOCATION OF AMOUNTS.—The amounts specified in paragraph (1) shall be allocated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"(c) PERSON.—For purposes of this subchapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this subchapter, the term 'United States' has the meaning given such term by section 4612(a)(4).

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this subchapter, the term 'tangible personal property' includes gases.

"(f) IMPORT.—Except as otherwise provided in regulations, for purposes of this subchapter, the term 'import' means the entering, or withdrawal from warehouse, for consumption.

"(g) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4681 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

"(h) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4681.

"(i) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 12 months, there shall be substituted for the dollar amounts otherwise applicable under sections 4687(a)(2) and 4689(a)(2) (determined after the application of subsection (b)) an amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(j) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this subchapter, except as provided in regulations, the term 'sale' includes any exchange or other transfer, other than a gift (within the meaning of section 102 or section 170)."

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) of such Code (relating to addition to tax) is amended by inserting "section 4689 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) FAILURE TO MAKE DEPOSITS.—Section 6656 of such Code (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4681, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4681 during the taxable period on taxable transactions described in paragraph (1) of section 4683(a), or

"(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—Paragraph (2) of section 7871(a) of such Code (relating to Indian tribal governments treated as States for certain purposes) is amended by redesignating subparagraphs (A), (B), (C), and (D) as subparagraphs (B), (C), (D), and (E), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) subchapter E of chapter 38 (relating to Superfund excise tax),".

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by inserting after the item relating to subchapter D the following new item:

"Subchapter E. Superfund excise tax."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods ending after December 31, 1985.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles imported after December 31, 1985.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING JANUARY 1, 1986.—In the case of any taxable period which begins before January 1, 1986, and ends on or after January 1, 1986, the tax imposed by section 4681 of the Internal Revenue Code of 1954 on taxable transactions described in paragraph (1) of section 4683(a) of such Code (and the credit allowable under section 4687 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after December 31, 1985, bears to

(B) the number of days in such taxable period.

SEC. 418. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 418(b) of the Superfund Revenue Act of 1985, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) Transfers to Superfund.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, 4677, or 4681 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) Expenditures From Superfund.—

"(1) In general.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) Exception for certain transfers, etc. of hazardous substances.—Amounts in the Superfund shall not be available for any transfer or disposal which could not be made but for section 121(i) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) Repayment of advances.—

"(A) In general.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) Final repayment.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1986, $36,000,000,
(2) 1987, $36,000,000,
(3) 1988, $36,000,000,
(4) 1989, $36,000,000, and
(5) 1990, $36,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on November 1, 1985.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the

amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 421. ADDITIONAL TAX ON GASOLINE, DIESEL FUEL, AND SPECIAL MOTOR FUELS.

(a) General Rule.—

(1) Gasoline.—Section 4081 of the Internal Revenue Code of 1954 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) Tax To Fund Highway Program.—

"(1) In general.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

"(2) Termination.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) Additional Tax To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) In general.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

"(2) Termination.—

"(A) In general.—The tax imposed by paragraph (1) shall not apply after the earlier of—

"(i) September 30, 1990, or

"(ii) the last day of the termination month.

"(B) Termination month.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

"(C) Net revenues.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) Diesel and special motor fuels.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Additional Tax on Diesel Fuel and Special Motor Fuels To Fund Leaking Underground Storage Tank Trust Fund.—

"(1) **Diesel fuel.**—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in such vehicle, or

"(B) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under subparagraph (A).

"(2) **Special motor fuels.**—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or paragraph (1) of this subsection)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

"(3) **Termination.**—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(b) **Additional Taxes Not Transferred to Highway Trust Fund or Airport and Airway Trust Fund.**—

(1) **Highway trust fund.**—

(A) **In general.**—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) **Certain additional taxes not transferred to highway trust fund.**—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) **Conforming amendment.**—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) **Airport and airway trust fund.**—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(c) **Repayments for Gasoline Used on Farms, Etc.**—

(1) **Gasoline used on farms.**—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—Subsection (h) of section 6421 of such Code (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 of such Code is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) TERMINATION NOT TO APPLY.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on November 1, 1985.

SEC. 422. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline), and

"(2) amounts collected under section 9003(h)(3) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34,

with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage Tank Trust Fund."

(c) Effective Date.—The amendments made by this section shall take effect on November 1, 1985.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 431. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) In General.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum), as amended by section 411 of this Act, are each amended by striking out "of 3.85 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) Increase in Tax.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Rate of Tax.—

"(1) In general.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) Rates.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 3.85 cents a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) Conforming Amendments.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) Application of Taxes.—

"(1) Superfund rate.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

"(2) Oil spill rate.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990."

(2) Subsection (d) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) APPLICATION OF TAXES.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990."

(3) Subsection (b) of section 9505 of such Code (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 432. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under title I of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974, and

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(A) the payment of removal costs described in section 101(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act, as in effect on the date of the enactment of this section,

"(B) the payment of contributions to the International Fund under section 404 of such Act,

"(C) the payment of removal costs for which the Deep Water Port Liability Fund is liable under the Deep Water Port Act of 1974, "(D) the payment of removal costs for which the Offshore Oil Pollution Compensation Fund is liable under title III of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(E) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act.

Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (B) with respect to any contribution to the International Fund only in proportion to the portion of the International Fund used for the payment of response costs.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) **Clerical Amendment.**—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) **Effective Date.**—The amendments made by this section shall take effect on January 1, 1986.

PART IV—STUDIES

SEC. 441. STUDY OF IMPACT OF WASTE MANAGEMENT TAX ON DOMESTIC MANUFACTURERS.

(a) **General Rule.**—The Secretary of the Treasury or his delegate shall conduct a study on the effects of the tax imposed by section 4671 of the Internal Revenue Code of 1954 on the ability of domestic manufacturers to compete in international trade.

(b) **Report.**—Not later than July 1, 1986, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include recommendations to minimize the trade impact of such tax and there shall be considered, in making such recommendations, a waste management tax export credit, an import equalization fee, and a maximum amount of tax with respect to hazardous waste generated by economically distressed industries.

SEC. 442. STUDY OF LEAD POISONING.

(a) **In General.**—The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1986, submit to the Committee on Environment and Public Works, and the Committee on Finance, of the Senate and the Committee on Energy and Commerce, and the Committee on Ways and Means, of the House of Representatives, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information:

(1) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(2) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(3) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead, including (but not limited to) diminution in intelligence and increases in morbidity and mortality; and

(4) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(b) **Evaluation of Specific Sites.**—Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(c) AUTHORIZATION FROM SUPERFUND.—There are authorized to be appropriated from the Hazardous Substance Superfund such sums as may be necessary to prepare and submit the report required by this section.

PART V—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 451. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund which are not also authorized by this title,

shall have no force or effect.

I. SUMMARY

A. Present Law

Hazardous Substance Response Trust Fund and Taxes

Prior to October 1, 1985, excise taxes were imposed on crude oil and certain chemicals, and revenues equivalent to these taxes were deposited into the Hazardous Substance Reponse Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment, including cleanup costs and the payment of damages for injury to or destruction of certain natural resources controlled by the Federal or State governments. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills (not including oil spills) and uncontrolled hazardous waste sites.

The crude oil tax of 0.79 cent per barrel was imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax had not already been paid).

The tax on chemicals was imposed on the sale or use of 42 specified organic and inorganic substances if they were produced in or imported into the United States. The taxable chemicals generally are chemicals that are hazardous or chemicals which may create hazardous products or wastes when used. The rates varied from 22 cents per ton to $4.87 per ton. (See Table 1 for a listing of these rates.)

The Superfund taxes terminated after September 30, 1985.

Post-closure Liability Trust Fund

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton was imposed on hazardous waste received at a qualified hazardous waste disposal facility and remaining at the facility after its closure. These tax receipts were intended to be deposited into the Post-closure Liability Trust Fund. This Trust Fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities which meet certain conditions. These provisions were enacted in CERCLA.

The authority to collect the tax on hazardous wastes expired after September 30, 1985.

B. Committee Amendment to H.R. 2817

Hazardous Substance Superfund and Taxes

Hazardous Substance Superfund

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund" and continues and expands the fund to enable it to carry out the general expanded program provided by H.R. 2817, as amended by the authorizing committees. Permitted uses of the Fund under this bill include the financing of certain emergency relief and health effect studies; certain toxicological profiles and hazard evaluation projects; various research, training, and other proposals associated with hazardous wastes; and an expanded cleanup program for hazardous waste sites. The committee amendment produces an estimated $10 billion in revenues to the Superfund (including interest, general revenues, and recoveries) for these purposes over fiscal years 1986 through 1990.

In addition to the taxes described below, appropriations of $180 million ($36 million per year) are authorized for fiscal years 1986 through 1990 from general revenues. The Superfund expenditure purposes are generally the same as under present law, with modifications to conform to the amendments made by the authorizing committees; however, no funds could be used for the payment of natural resource damage claims.

Superfund taxes

To finance the expanded Superfund, the committee amendment re-enacts and expands the prior law Superfund taxes and imposes new taxes, as follows:

Petroleum tax

The petroleum tax is re-enacted and imposed at a new 3.85-cents-per-barrel rate, effective November 1, 1985, through September 30, 1990.

Chemical feedstock tax

The chemical feedstock tax is re-enacted and imposed at modified rates, effective November 1, 1985, through September 30, 1990. The tax applies to prior law feedstocks, as well as to lead. Exceptions are added for exported feedstocks, for recycled nickel, chromium, cobalt, or lead, and for substances used to produce animal feed; the exception for coal-derived feedstock is repealed (the other prior law exceptions are retained). Tax rates would be indexed for inflation beginning in 1987. The committee amendment also includes clarifications regarding the tax treatment of xylene and of certain inventory exchanges.

Tax on imported chemical derivatives

The committee amendment imposes a tax, effective January 1, 1987 through September 30, 1990, on imported products produced from taxable chemical feedstocks or petroleum. The tax will be limited to products identified by Treasury regulations as having more than 50 percent of their value attributable to these materials using the predominant method of production. The amount of tax will be equivalent to the tax which would have been imposed on the petroleum or feedstocks contained in the product; if this cannot be established, the tax will equal 5 percent of the value of the imported product.

Waste management tax

The committee amendment includes a new waste management tax designed to raise an estimated $1.5 billion of revenue for the Superfund over fiscal years 1986 through 1990. This tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States.

The waste management tax is imposed at three different rates depending on the method of waste management. The highest rate ($27 per ton in 1986) applies to land surface disposal units (i.e., landfills, surface impoundments, waste piles, and land treatment units). An intermediate rate ($2.70 per ton in 1986) applies to all qualified hazardous waste management units (including injection wells) other than land surface disposal units and waste water treatment units. The lowest rate ($0.15 per ton) applies to non-exempt waste water treatment units. Waste water treatment units generally are exempt from tax unless subject to a required but uncompleted corrective action.

A credit for tax paid with respect to hazardous waste is allowed for waste that is managed using a qualifying treatment, recycling, or incineration process, within 90 days of the event giving rise to tax. Qualified processes include (1) land-based incineration, (2) methods of treatment or disposal equivalent to land-based incineration, (3) recycling of batteries, and (4) reclamation of chemical fuels and solvents (without regard to the 90 day requirement). A process is treated as the equivalent of land-based incineration if it conforms to EPA performance standards and such standards require a destruction and removal efficiency at least equivalent to the standard applicable to incineration on the land.

The tax generally is imposed on the owner or operator of the qualified hazardous waste management unit, the person receiving hazardous waste for the purpose of ocean disposal, or the exporter of hazardous waste.

A back-up tax (at the rate applicable for land surface disposal) is imposed on the generator of hazardous waste if such waste is not received at a qualified hazardous waste management unit, received for ocean disposal, or exported, within 270 days of generation. Exemptions are provided for waste that is (1) discharged legally into a publicly owned treatment works, (2) generated by a small generator, or (3) specifically exempt from the waste management tax (by reason of receipt at a Federally owned facility or waste arising from certain remedial and removal actions). In addition, the Secretary of the Treasury may by regulation provide additional exemptions (or a reduced rate of tax) consistent with the purposes of the waste management tax.

The waste management tax is effective for waste received or exported after December 31, 1985 and before October 1, 1990. The back-up tax is effective for waste generated after December 31, 1986 and before October 1, 1990.

The Treasury Department is directed to study the potential trade impacts of the waste management tax and to deliver a list of recommendations for minimizing any adverse impacts to the Committee on Ways and Means by July 1, 1986.

Superfund Excise Tax

Under the committee amendment, a new Superfund Excise Tax is imposed on the sale or lease of tangible personal property, in connection with a trade or business, by the manufacturer of the property. The tax rate is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). In the case of imports, the tax is imposed on the importer of tangible personal property based on the customs value (or, if no customs value is available, the fair market value) of the imported property plus customs duties. The tax is fully deductible against Federal income taxes.

A credit is allowed against the tax for purchases of tangible personal property which is allocable to the cost of manufactured goods. No tax is imposed on any manufacturer having $10 million or less of sales or lease receipts in any year. (In the case of imports, no tax is imposed on any shipment with a customs value, including duties, of less than $10,000.) Credits in excess of a manufacturer's tax liability generally may be carried over against later years' tax liabilities; however, excess credits may not be refunded.

In addition to the exemption for small manufacturers, items sold or leased by governmental units and by tax-exempt organizations (other than by unrelated trades or businesses) are exempt from the tax. Additionally, exported items are exempt from tax. Food products (whether for humans or animals), unprocessed agricultural or fishery products, unprocessed timber, and fertilizer products are also exempt from the tax.

For purposes of the tax, "manufacturer" is generally defined as it is for purposes of the Standard Industrial Classification ("SIC") Manual published by the Office of Management and Budget. Manufacturing includes mining and the production of raw materials generally. However, manufacturing subject to the tax does not include the storage or transportation of property (or services incidental thereto) or the incidental preparation of property.

"Tangible personal property" includes natural gas and other gaseous products and materials, but does not include electricity.

The Superfund Excise Tax is effective from January 1, 1986 through December 31, 1990. Returns for the tax are to be filed on an annual basis, using the taxpayer's taxable year for income tax purposes. The tax generally is required to be deposited quarterly.

Post-closure Liability Trust Fund and Tax

The Post-closure Liability Trust Fund, and the related tax on hazardous wastes, are repealed by the committee amendment, effective after September 30, 1983. Taxes paid under this provision are to be refunded without interest.

Leaking Underground Storage Tank Trust Fund and Tax

The committee amendment establishes a new trust fund, the Leaking Underground Storage Tank Trust Fund, under the Internal Revenue Code. The Trust Fund is to be used to pay for the costs of corrective actions involving leaks of petroleum and petroleum products from underground storage tanks.

The Trust Fund will be financed by (1) a 0.2 cent per gallon tax on gasoline, diesel, and special fuels, (2) interest on Trust Fund balances, and (3) amounts received from responsible parties. The tax on gasoline, diesel, and special fuels is imposed on the same fuels as are taxable under sections 4041 and 4081 of the Code. The tax is effective November 1, 1985, through September 30, 1990. Earlier termination would occur when receipts from the tax exceed $850 million.

Oil Spill Liability Trust Fund and Tax

The committee amendment establishes an Oil Spill Liability Trust Fund under the Internal Revenue Code. An excise tax of 1.3 cents per barrel (in addition to the Superfund petroleum tax) is imposed on domestic crude oil and imported petroleum products, and the proceeds of this tax are to be deposited in the Trust Fund. Amounts in the Trust Fund can be used to pay for costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities. The tax to fund the Oil Spill Liability Trust Fund is effective January 1, 1986, through September 30, 1990.

II. EXPLANATION OF COMMITTEE AMENDMENT TO H.R. 2817

A. Present Law

1. Hazardous Substance Response Trust Fund and Taxes

Hazardous Substance Response Trust Fund

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (P.L. 96-510) established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous substance spills and uncontrolled hazardous waste sites.

The Hazardous Substance Response Trust Fund ("Superfund") was established by CERCLA as a trust fund in the Treasury of the United States. Amounts in the Superfund are available for expenditures incurred under section 111 of CERCLA (as enacted) in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include: (1) costs of responding to the presence of hazardous substances on land or in the water or air, including removal of such substances and remedial action; (2) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by the Federal or State governments; and (3) certain costs related to response, including damage assessment, epidemiologic studies, and maintenance of emergency response forces.[2]

Under CERCLA, there were appropriated to the Superfund: (1) amounts equivalent to amounts received in the Treasury under Internal Revenue Code sections 4611 (pertaining to the petroleum tax) and 4661 (pertaining to the tax on certain feedstock chemicals); (2) amounts recovered from responsible parties on behalf of the Superfund under CERCLA; (3) penalties assessed under title I of CERCLA; and (4) punitive damages under section 107(c)(8) of CERCLA (pertaining to damages for failure to provide removal or remedial action upon order of the President). The petroleum and feedstock chemicals taxes expired after September 30, 1985.

In addition to these amounts, CERCLA authorized general revenue appropriations to the Superfund of $44 million per year for fiscal years 1981 through 1985 (i.e., an aggregate of $220 million) and, for 1985, an additional amount equal to so much of the aggregate authorized to be appropriated for 1981 through 1984 as had not been appropriated before October 1, 1984.

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[2] The Fund also may be used for payment of claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act. All moneys recovered under section 311(b)(6)(B) of the Clean Water Act are appropriated to the Superfund. These claims and moneys involve certain costs arising before the date of enactment of CERCLA.

Not more than 15 percent of the Superfund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. CERCLA further provided that claims against the Superfund may be paid only out of the Fund. If, at any time, claims against the Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined.

The Superfund had authority under CERCLA to borrow for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time could not exceed estimated tax revenues for the succeeding 12 months; advances for paying natural resource damage claims could not exceed 15 percent of such revenues. All advances were required to be repaid by September 30, 1985.

The Superfund is managed by the Secretary of the Treasury, who is required to report annually to Congress on the financial condition and operations of the Fund.

Petroleum tax

Under CERCLA, an excise tax (the "petroleum tax") of 0.79 cent per barrel was imposed on domestic crude oil and on petroleum products (including crude oil) entering the United States for consumption, use, or warehousing (sec. 4611 of the Code). The tax on domestic crude oil was imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products was imposed on the person entering the product into the United States for consumption, use, or warehousing. If crude oil was used in, or exported from, the United States before imposition of the petroleum tax, the tax was imposed on the user or exporter of the oil.

Domestic crude oil subject to tax included crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil did not include oil used for extraction purposes on the premises from which it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil did not include synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass, or refined oil).

Petroleum products which were subject to tax upon being entered into the United States included crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products (and chemicals subject to the feedstock tax) had been produced in, entered into, or exported from the United States, the term "United States" was defined to mean the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The term "United States" also included the Outer Continental Shelf areas and foreign trade zones located within the United States. There was no exception for bonded petroleum products. Revenues from the petroleum tax were not paid to Puerto Rico or the Virgin Islands under the cover over provisions of section 7652 of the Code.

It was specified that the petroleum tax was to be imposed only once with respect to any petroleum product. Thus, anyone otherwise liable for the tax could avoid payment by establishing that the tax already had been imposed with respect to that product.

Amounts equivalent to the revenues from the petroleum tax were deposited in the Superfund.

The petroleum tax expired after September 30, 1985.[3]

Tax on chemical feedstocks

In addition to the petroleum tax, CERCLA imposed an excise tax (the "chemical feedstocks tax") on the sale or use of 42 specified chemical feedstocks by the manufacturer, producer, or importer thereof (sec. 4661 of the Code). These feedstocks generally are hazardous substances or may create hazardous products or wastes when used. The tax was imposed on feedstocks manufactured in the United States or entered into the United States for consumption, use, or warehousing. The tax rates were specified per ton of taxable chemical, and varied from 22 cents to $4.87 per ton. In the case of a taxable chemical which is a gas (e.g., methane), the tax was imposed on the number of cubic feet of such gas which is equivalent to 2,000 pounds on the basis of molecular weight. (See Table 1, below, for a list of taxable chemical feedstocks and applicable tax rates.)

The tax rates on petroleum and chemical feedstocks were set to achieve a $1.6 billion Superfund program over 5 years, of which $1.38 billion was to be derived from taxes and the remainder from general revenues. Sixty-five percent of the tax burden was to be allocated to organic ("petro") chemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of wastes (derived from these chemicals) found in hazardous waste sites (based on data available in 1980). In addition, the chemical feedstock tax rates were limited to the lesser of (1) two percent of wholesale price (based on data available in 1980), or (2) a cap equal to $4.87 per ton for organic chemicals and $4.45 per ton for inorganic chemicals, with certain chemicals being taxed at lower rates than would be arrived at under this formula.

Prior law provided six exemptions from the tax on feedstocks. First, in the case of butane and methane, the tax was not imposed if those substances were used as a fuel. (If those substances were used other than as a fuel, for purposes of the tax, the person so using them was treated as the manufacturer.) Second, an exemption was provided for nitric acid, sulfuric acid and ammonia (and methane used to produce ammonia) used in the manufacture or production of fertilizer or directly applied as fertilizer. Third, an exemption was provided for sulfuric acid produced solely as a by-product of (and on the same site as) air pollution control equipment. Fourth, any taxable chemical was exempt to the extent it was derived from coal. Fifth, an exemption was provided for otherwise taxable organic chemicals (i.e., acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphtalene, propylene, toluene, and xylene) which were used for the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel. (The petroleum tax continued to apply to domestic crude oil or imported petroleum products used for these purposes.) Finally, the transitory existence of cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide during a metal refining process was not subject to tax if the compound existed in the process of converting or refining non-taxable metal ores or compounds into other (or more pure) non-taxable compounds. (If a substance was removed in the refining process, tax was imposed even if the substance was later reintroduced to the refining process.) These last two exceptions were added by the Tax Reform Act of 1984, but were effective as if enacted as part of CERCLA.

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[3] Prior law also contained provisions which would have suspended or terminated the tax had revenues accumulated faster than a specified rate. Under one such provision, if on September 30, 1983, or September 30, 1984, (1) the unobligated balance in the Superfund had exceeded $900 million, and (2) the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, had determined that such unobligated balance would exceed $500 million on September 30 of the following year (if no tax was imposed under section 4611 or section 4661 of the Code during the calendar year following the first date referred to above), then no tax would have been imposed during the first calendar year beginning after the first date referred to above. (As of September 30, 1984, the unobligated balance in the Superfund was $295.1 million.) Further, the authority to collect the tax would have terminated if cumulative receipts from the petroleum and chemical taxes had reached $1.38 billion before September 30, 1985 (sec. 303 of CERCLA). (As of September 30, 1984, cumulative receipts from these taxes amounted to $0.863 billion.)

Under prior law, if a taxpayer used a taxable chemical prior to any sale, the tax was imposed as if the chemical had been sold. When a taxable chemical was used to manufacture or produce a second taxable chemical, an amount equal to the tax paid on the first chemical was allowed as a credit or refund (without interest) to the manufacturer or producer of the second chemical (but not in an amount exceeding the tax imposed on the second chemical). Thus, the imposition of tax more than once on the same substance was avoided.

Amounts equivalent to the revenues from the tax on chemical feedstocks were deposited in the Superfund.

The tax on chemical feedstocks expired, together with the petroleum tax, after September 30, 1985.[4]

2. Post-closure Liability Trust Fund and Tax

Post-closure Liability Trust Fund

In addition to the Superfund, CERCLA established the Post-closure Liability Trust Fund in the United States Treasury. The Post-closure Liability Trust Fund is to assume completely the liability, under any law (including the liability provisions of CERCLA), of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Resource Conservation and Recovery Act ("RCRA") (Title II of the Solid Waste Disposal Act).[5]

This transfer of liability to the Trust Fund may take place after (1) the owner and operator of the facility has complied with the requirements under RCRA which may affect the performance of the facility after closure, (2) the facility has been closed in accordance with the regulations and the conditions of the permit, and (3) the facility has been monitored (as required by the regulations and permit) for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur (sec. 107(k) of CERCLA). The transfer of liability is to be effective 90 days after the owner or operator of the facility notifies the Administrator of the Environmental Protection Agency (and the State, if it has an authorized program) that the required conditions have been satisfied. No liabilities have yet been transferred to the Post-closure Trust Fund under present law.

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[4] The tax would have been terminated suspended or terminated earlier than September 30, 1985, under the same conditions as the petroleum tax. (See footnote 3.)

[5] RCRA provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits generally are required under RCRA for hazardous waste treatment, storage, and disposal facilities.

In addition to payment of damages and cleanup expenses for such sites, the Trust Fund also may be used to pay costs of monitoring, care, and maintenance of a site incurred by other persons, after the period of monitoring required by RCRA, for facilities meeting the applicable transfer of liability requirements.

The Post-closure Liability Trust Fund does not assume the legal liability of waste generators or transporters.

As in the case of the Superfund, claims against the Post-closure Liability Trust Fund may be paid only out of this Trust Fund. If, at any time, claims against this Trust Fund exceed the balance available for payment of those claims, then the claims are to be paid in full in the order in which they are finally determined.

The Post-closure Liability Trust Fund is subject to the same administrative provisions as the Superfund, including the right to borrow limited amounts from the Treasury as repayable advances (not to exceed $200 million).

Tax on hazardous wastes

Prior law (sec. 4681 of the Code) imposed an excise tax (the "post-closure tax") of $2.13 per dry weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applied only to hazardous waste that will remain at the facility after the facility is closed. The tax was imposed on the owner or operator of the qualified hazardous waste disposal facility. It was intended that amounts equivalent to the revenues from this tax be deposited into the Post-closure Liability Trust Fund.

For purposes of the post-closure tax, the term hazardous waste meant any waste (1) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date), and (2) that was subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect on that date. Qualified hazardous waste disposal facilities were facilities that have received a permit or have been accorded interim status under the Solid Waste Disposal Act.

The post-closure tax applied to the receipt of hazardous waste after September 30, 1983.

The authority to collect the post-closure tax terminated after September 30, 1985 (sec. 303 of CERCLA).

3. Statutory Provisions Relating to Oil Spills

Present law does not provide a comprehensive trust fund for purposes of oil spill liability and compensation; however, funds relating to oil spills are established under the following statutes.

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. sec. 1321) established a $35 million revolving fund maintained by fines, penalties, and appropriations of general revenue. The fund may be used for cleanup of releases of oil into navigable waters and restoration of accompanying natural resources. The Act also established strict joint and several liability pertaining to responsibility for cleanup expenses, and authorized the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act ("TAPAA")

The TAPAA (43 U.S.C. sec. 1651 *et seq.*) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system ("TAPS") to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and the Fund's revenues are intended to be used to compensate for damages, including cleanup, restoration of natural resources, and economic loss, resulting from spills from vessels carrying TAPS oil. Owners and operators are strictly liable, and the fund may seek to recover its expenses from responsible parties. Because of a $100 million ceiling to which the Fund is subject, the fee is to be suspended each time that maximum is achieved and maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments to the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1812). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. (The fee may be reduced when the balance in the Fund reaches the $200 million cap.) The Fund may be used to compensate for damages, including cleanup, property damage and loss of income and tax revenue, resulting from spills of oil produced on the Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are specified, and the Fund may seek to recover its expenses from responsible parties. The fee is collected by the Internal Revenue Service; however, collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in specified deepwater port operations (33 U.S.C. sec. 1517). This fund is maintained by a $.02 a barrel fee assessed on oil loaded at a deepwater port. A spiller of deep water port oil is strictly liable for resulting damages.

Under the Deep Water Port Act Amendments of 1984 (P.L. 98-419), collection of the fee was suspended; however, collection could be reinstated by the Secretary of Transportation under certain circumstances.

B. Reasons for Change

1. Hazardous Substance Response Trust Fund and Taxes

Expansion of Superfund program

In 1980, Congress created a major Federal program to clean the worst abandoned hazardous waste sites in the country by enacting the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). CERCLA provided a 5-year, $1.6 billion cleanup program financed by $0.22 billion of general revenues and an estimated $1.38 billion of excise taxes on petroleum and specified chemical feedstocks. It was intended that the Hazardous Substance Response Trust Fund ("Superfund") would be supplemented by amounts collected from enforcement and cost recovery actions against responsible parties, and ultimately would become self-financing. Under CERCLA, the petroleum and chemical feedstock excise taxes were imposed through September 30, 1985.

It is now clear that the initial Superfund program is not adequate to achieve the goals of the 1980 Act. Additionally, Title I of H.R. 2817, as reported by other committees, would mandate stringent cleanup standards, provide for response to releases of petroleum and petroleum products from underground storage tanks, and require certain health effect, toxicological profile, and hazard evaluation studies, as well as various research and training programs. As reported by the Committee on Public Works and Transportation, the bill would also establish a mandatory cleanup schedule for hazardous waste sites. H.R. 2817 further allows citizens to sue in Federal court to enforce requirements under the bill and to seek the performance of nondiscretionary duties by the EPA. These provisions substantially increase the financial requirements of the Superfund. The committee has reported an amendment to the revenue title (Title IV) of H.R. 2817 providing an estimated $10 billion of funding (including interest, general revenues, and recoveries) which, in the committee's judgment, will be necessary to finance the cost of carrying out this expanded Superfund program through fiscal year 1990.

In addressing the financing of the Superfund program, the committee also examined the uses of the Fund. Under current law, fund receipts may be used for the payment of natural resource damage claims filed with respect to State and Federal property. The committee decided that no portion of Superfund revenues should be used for the payment of such claims. Superfund revenues used to pay damage claims are diverted from the cleanup of the nation's worst abandoned hazardous waste sites, which is the primary objective of the Superfund program. Also, the committee was concerned that the Superfund might not be able to satisfy current and future damage claims.

In financing the substantial increase in the Superfund program, the committee sought to broaden the tax base; to raise revenues in an equitable manner; to minimize adverse trade and other economic effects; and to limit the impact of the program on the Federal deficit.

General revenue appropriations

Under the committee amendment, the general revenue contribution to the Superfund is decreased, to $0.18 billion over the fiscal year 1986–1990 period. This approach will limit the impact of the Superfund on the budget deficits projected for those years. The committee recognized the societal nature of the hazardous waste problem, and the appropriateness of a broad-based financing source by imposing a new Superfund excise tax on manufacturers (discussed below).

Petroleum and chemical feedstocks taxes; tax on imported derivatives

The committee agreed to increase the prior law petroleum tax from 0.79 cents per barrel to 3.85 cents per barrel.

The committee amendment also increases modestly the contribution of the chemical feedstock tax to Superfund revenues. This is accomplished by adjusting the tax rates for certain substances and, beginning in 1987, by indexing the tax rates to the producer price index for organic or inorganic chemicals (as appropriate). Indexing of tax rates will ensure that future changes in chemical prices do not change the relative tax burden (e.g., between organic and inorganic chemicals) over the reauthorization period. Because lead compounds have contributed to a substantial number of Superfund sites, the committee amendment also adds lead to the list of taxable feedstock chemicals.

Under prior law, otherwise taxable feedstocks were exempt to the extent that they were derived from coal. The committee repealed this exmption in order to more equitably allocate the burden of the feedstock tax.

While generally believing that the feedstock tax should be allocated without regard to production methods, the committee believes that the recycling of metals—as opposed to land disposal—represents an important environmental objective. The committee amendment therefore exempts domestically recycled nickel, chromium, cobalt, and lead from the feedstock tax. (Imports of recycled metals are not exempt.) This amendment has the effect of encouraging recycling over both imported and primary domestic production of the relevant metals. In addition to recycling, the committee agreed to exempt from the feedstock tax substances used (directly or indirectly) to produce animal feed; this parallels a prior law exemption for fertilizer production and will encourage the use of otherwise taxable chemicals to produce animal feed.

One reason for not increasing further the feedstock tax was the committee's concern that higher rates could have damaging trade effects. Concern for these effects also prompted the committee to make two specific adjustments to the tax. First, the committee agreed to exempt exports of taxable chemicals from the feedstock tax. Together with the existing tax on imported feedstocks, this amendment will remove the negative trade bias in cases where taxable feedstocks are traded with other countries.

Second, the committee was concerned that the petroleum and feedstock taxes provides an unintended advantage for imported products that are manufactured using domestically taxable feedstock chemicals. To limit these trade advantages, the committee agreed to impose a tax on imported products which are directly and substantially produced from taxable feedstock chemicals or petroleum products. To simplify administration, the tax will be limited to products which are specifically identified by the Treasury Department as having more than one-half of their value derived from taxable feedstocks or petroleum products. The Treasury is allowed a year (until January 1, 1987) to develop its initial list of taxable imports. The committee believes that this approach will equalize the trade burden with respect to products substantially derived from on taxable chemicals, while avoiding undue administrative and enforcement problems.

Waste management tax

The petroleum and feedstock taxes constituted the primary revenue sources under the original Superfund program. These taxes were justified on the ground that most hazardous waste found at abandoned disposal sites is derived from petroleum and the 42 original feedstock chemicals. However, the committee believes that it is unfair to tax only the producers of certain chemicals found in hazardous waste, and not the generators and disposers of such hazardous waste. To remedy this inequity, the committee adopted a new tax on the treatment, storage, and disposal of hazardous waste to contribute to the financing of the Superfund program.

In addition to the equity argument for a waste management tax, the committee believes that the tax will create an incentive to better manage hazardous waste. The bill would tax land surface disposal at a higher rate than other types of waste management. Waste water treatment units, incinerators, and treatment processes with a destruction efficiency equivalent to land-based incineration generally would be exempt (or eligible for a credit) unless subject to a required corrective action order. The committee believes that these tax rate differentials will encourage desirable waste management practices which will reduce the likelihood of creating new toxic dump sites.

The committee is aware that the imposition of the waste management tax may, in certain cases, adversely affect domestic companies that compete with manufacturers located outside of the United States. Consequently, the committee directed the Treasury Department to analyze these potential competitive problems and make recommendations for their mitigation by July 1, 1986.

Superfund Excise Tax

The committee is of the view that the cleanup of abandoned hazardous waste sites is a broad societal problem extending beyond the chemical and petroleum industries. Thus, the committee amendment includes a new excise tax on all manufacturing sectors of the economy.

The Superfund Excise Tax ("SET") on manufacturers is structured as an indirect tax (i.e., a tax on goods rather than on persons). Under the General Agreement on Tariffs and Trade ("GATT"), to which the United States is a signatory, indirect taxes generally may be imposed according to the "destination principle," (i.e., rebated on export and imposed on imports). By structuring the SET as a destination-principle tax, the committee sought to minimize the adverse effects of the tax on the U.S. merchandise trade balance.

The imposition of the Superfund Excise Tax is limited to importers, manufacturers, and producers (including mining). The Superfund Excise Tax is limited to manufacturers and producers with over $10 million of sales and/or lease income. To further reduce administration and compliance costs, Superfund Excise Tax liability generally is computed with reference to manufacturers' inventory costs, as computed for income tax purposes, rather than on the basis of tax payments shown on special invoices.

Transfer of Superfund to Internal Revenue Code

The committee further decided to relocate the Superfund, together with the new Leaking Underground Storage Tank and Oil Spill Liability Trust Funds (discussed below), under the Trust Fund Code of the Internal Revenue Code (Chapter 98); this is consistent with recent congressional actions regarding trust funds, but does not affect jurisdiction over these funds.

2. Post-closure Liability Trust Fund and Tax

The committee amendment repeals, effective October 1, 1983, the Post-closure Liability Trust Fund and does not extend the post-closure tax on hazardous waste enacted in 1980. Amounts previously paid as taxes would be refunded to the original taxpayers.

The Post-closure Fund is a form of Federal insurance for qualifying hazardous waste facilities. The committee was concerned that the liability that ultimately could be transferred to the Federal Government under this provision is unlimited. Such liability is governed in part by State and local laws, which could change, and which could cover such items as medical expenses, pain and suffering, and income losses. Thus, the amount of claims against the Post-closure Fund could be extremely large, and there is concern that the Post-closure Fund would have inadequate resources to compensate the victims of even a few releases. This could necessitate a large tax increase or use of general revenues to pay these claims.

The committee also was concerned that the transfer of liability to the government may diminish incentives to construct durable disposal facilities. The Post-closure Fund appears to subsidize hazardous waste disposal relative to treatment facilities. Further, because storage facilities do not pay the tax, a storage facility which switched its status to that of a disposal facility just before closure could transfer liability to the Post-closure Fund without ever having paid the tax. Other such mismatches between the tax and eligibility for transfer of liability are possible; for example, a facility with an interim status permit may be required to pay the disposal tax but, if it never receives a final RCRA permit, would never be able to transfer liability to the Fund. In addition, the Post-closure Fund does not relieve waste generators and transporters from legal liability for damages caused by wastes deposited at a hazardous waste disposal facility.

Finally, under current law, the Federal Government can be sued by any party that claims an injury as a result of exposure to a release from a disposal facility for which the Federal Government is liable. The future cost of litigation under this provision could be high.

3. Leaking Underground Storage Tank Trust Fund and Tax

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), funds from the Superfund generally are not available for the cost of cleaning releases of petroleum and petroleum products. The committee believes that the threat to human health and the environment resulting from releases of petroleum and petroleum products from underground storage tanks is a serious problem that cannot adequately be resolved by responsible parties alone. Accordingly, the committee amendment establishes a separate trust fund, the Leaking Underground Storage Tank Trust Fund, to pay for the costs of corrective actions with respect to leaking underground storage tanks where no solvent owner or operator can be found, or the owner or operator refuses or is unable to comply properly with a corrective action order.

The Trust Fund would be financed primarily by a 0.2 cent per gallon tax on gasoline, diesel, and special motor fuels. The tax is based on motor fuels since most releases of petroleum products from underground storage tanks involve these fuels.

4. Oil Spill Liability Trust Fund and Tax

The committee believes that it is important to establish a readily available source of funds to clean up pollution from oil spills from vessels or offshore facilities. The committee, however, does not believe that the Federal Government should have to bear these costs. These cleanup costs generally should be imposed upon the party responsible for them or, alternatively, upon the class of persons who create the risk of these spills.

To accomplish these goals, the committee decided that it is appropriate to impose an excise tax of 1.3 cents per barrel on domestic crude oil and imported petroleum products. The committee also has decided that revenues from this tax should be earmarked for inclusion in a new trust fund for payments of oil spill cleanup costs.

Under the committee amendment, expenditures from the Oil Spill Liability Trust Fund are limited specifically to cleanup and related costs. This is consistent with the expenditure purposes of the Superfund, which (under the committee amendment) do not include compensation of damage claims for natural resources, property loss, lost wages, or reduced State and local tax revenues. The committee was concerned that compensation of natural resource and other damage claims (as in the bill as approved by other committees) could result in potentially unlimited claims against the Fund. For example, the ALVENUS spill off the Louisiana coast in 1984 cost the spiller less than $5 million in cleanup costs, yet generated damage claims of $100 million. Several claims of this magnitude could overwhelm the proposed $300 million Fund. Although Congress would not be required to pay claims in excess of Fund balances, or $200 million per incident, there would be considerable pressure from unsatisfied claimants to expand the size of the Fund. Thus, the Fund could become a potentially open-ended entitlements program.

The committee was further concerned that if damages for economic losses were allowed, the Fund would, in effect, establish a separate governmental unemployment compensation program for the fishing and tourist industries—both owners and employees—on much more favorable terms than such compensation is provided to other comparable groups of U.S. citizens. Other individuals lose wages, profits, and property values, on account of circumstances beyond their control, but generally are not entitled to governmental compensation. The provision to compensate State and local governments for loss of tax revenue singles out certain governments for a special revenue sharing program on very favorable terms.

C. Explanation of Provisions

1. The Hazardous Substance Response Taxes and Trust Fund

a. Hazardous Substance Superfund

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund" and continues and expands the Superfund by allocating to the fund amounts equivalent to revenues derived from expanded taxes on petroleum and chemical feedstocks; a new waste management tax; a new Superfund excise tax on manufacturers; and a tax (beginning in 1987) on imported substances derived from taxable chemical feedstocks or petroleum. The bill also authorizes general revenue appropriations to the Fund of an additional $36 million for each of fiscal years 1986–1990 (an aggregate of $180 million), plus, for each such fiscal year, an amount equal to the aggregate amount authorized but not yet appropriated for prior years. Other amounts allocated to the Fund under present law (including penalties, punitive damages, amounts recovered on behalf of the fund, and interest on Trust Fund balances) are not affected by the committee amendment. Superfund revenues from taxes, general revenues, interest on Fund balances, and recoveries are estimated to total $10 billion over the reauthorization period.

Under the committee amendment, the expenditure purposes of the Superfund generally are amended to conform to the expanded list of Superfund activities under section 111 of CERCLA, as amended by H.R. 2817 as reported by the Committee on Energy and Commerce and the Committee on Public Works and Transportation.[6] These include: emergency relief and health effects studies, including health assessment studies regarding individual facilities; preparing toxicological profiles of certain hazardous substances; costs of a hazardous substance research and training program (not to exceed $113 million over the 5-year period); research and development costs associated with alternative remedial technologies (not to exceed $125 million per year); grants for university hazardous waste research centers (not to exceed $10 million per year); grants to nonprofit organizations for the training of hazardous waste workers (not exceeding $10 million per year); enforcement and oversight costs associated with certain private remedial activities resulting from consent orders or settlement agreements; grants for technical assistance to individuals affected by hazardous substance releases; and evaluation of potential hazards posed by facilities pursuant to petitions filed by any person. Expenditure purposes authorized under section 111(a)(1), (2), (4), or (5) of CERCLA as in effect on the date of enactment of the committee amendment, or later authorized expenditures for the same general purposes are included. However, fund amounts would no longer be available for the payment of damage claims (including the costs of damage assessment) for injury to, or destruction or loss of, natural resources owned or controlled by the Federal or State governments as a result of a release or threat of release of a hazardous substance, as presently authorized under section 111(a)(3) of CERCLA.

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[6] See H. Rep. No. 99-253, Part 1, accompanying H.R. 2817, 99th Cong., 1st Sess. (August 1, 1985) (Committee on Energy and Commerce).

The committee amendment also specifies that no Superfund monies are to be available for a transfer of hazardous substances between facilities which could not take place except for section 121(i) of H.R. 2817.

The committee amendment generally continues the present law provisions regarding administration of the Superfund, and authorizes the Fund to borrow amounts from the Treasury as repayable advances for any authorized fund purpose. Any such advances are required to be repaid before September 30, 1990. The committee amendment also transfers the trust fund provisions to the Internal Revenue Code.

The amendments to the Superfund trust fund provisions are effective on November 1, 1985. Special effective date provisions apply for certain of the Superfund taxes (as described below).

b. Excise tax on petroleum

The committee amendment re-enacts the prior law environmental excise tax on petroleum and increases the tax from 0.79 cents per barrel tax to 3.85 cents per barrel. This tax is to apply from November 1, 1985, through September 30, 1990. Thus, the committee amendment repeals the termination provisions of present law (sec. 4611(d)), which would have terminated the tax if the unobligated balance in the Superfund exceeded specified amounts, and section 303 of CERCLA, which provided for termination of the environmental excise taxes when aggregate tax collections exceed $1.38 billion.

In addition to re-enacting the petroleum tax as a Superfund financing source, the committee amendment imposes a new 1.3-cent per barrel tax on crude oil and imported petroleum products to finance the Oil Spill Liability Trust Fund (discussed below).

c. Excise tax on chemical feedstocks

Tax rates

The committee amendment re-enacts and expands the prior law environmental excise tax on chemical feedstocks. Specifically, the committee amendment provides that specified organic and inorganic substances sold by the manufacturer, producer, or importer are to be taxed in accordance with the following table (Table 1).

Table 1.—Comparison of Chemical Feedstock Tax Rates Under Prior Law and the Committee Amendment

[Dollars per ton]

Substance	Prior law	Committee amendment, 1985–86
Organic Substances:		
Acetylene	4.87	4.74
Benzene	4.87	4.74
Butadiene	4.87	4.74
Butane	4.87	4.74
Butylene	4.87	4.74
Ethylene	4.87	4.74
Methane	3.44	3.35
Naphthalene	4.87	4.74
Propylene	4.87	4.74
Toluene	4.87	4.74
Xylene	4.87	9.68
Inorganic Substances:		
Ammonia	2.64	3.52
Antimony	4.45	4.33
Antimony trioxide	3.75	4.13
Arsenic	4.45	4.33
Arsenic trioxide	3.41	3.92
Barium sulfide	2.30	3.49
Bromine	4.45	4.33
Cadmium	4.45	4.33
Chlorine	2.70	3.40
Chromite	1.52	1.48
Chromium	4.45	4.33
Cobalt	4.45	4.33
Cupric oxide	3.59	4.00
Cupric sulfate	1.87	3.32
Cuprous oxide	3.97	4.15
Hydrochloric acid	0.29	0.83
Hydrogen fluoride	4.23	4.25
Lead	0.00	2.47
Lead oxide	4.14	4.21
Mercury	4.45	4.33
Nickel	4.45	4.33
Nitric acid	0.24	2.36
Phosphorus	4.45	4.33

Table 1.—Comparison of Chemical Feedstock Tax Rates Under Prior Law and the Committee Amendment—Continued

[Dollars per ton]

Substance	Prior law	Committee amendment, 1985–86
Potassium dichromate	1.69	3.25
Potassium hydroxide	0.22	2.67
Sodium dichromate	1.87	3.32
Sodium hydroxide	0.28	2.27
Stannic chloride	2.12	3.42
Stannous chloride	2.85	3.70
Sulfuric acid	0.26	0.70
Zinc chloride	2.22	3.46
Zinc sulfate	1.90	3.33

Beginning in calendar year 1987, the rates specified in Table 1 are to be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year is to be the percentage by which the average producer price index for basic organic chemicals, published by the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12 months ending in September 1985. In the case of inorganic substances, the inflation adjustment for any year is to be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeds the comparable average for the 12 months ending in September 1985. Tax rates would not be reduced below the levels shown in Table 1, even if the producer price index declines relative to 1985; however, if this occurs, the committee expects to consider whether such a reduction is appropriate. It is anticipated that the Treasury Department will publish annual tables setting forth increased tax rates resulting from the inflation adjustment.

Chemical feedstock tax rates generally were determined by a four stage process: first, price caps were established for each feedstock; second, the revenue increase at these caps over present law rates was computed (including the effect of indexing); third, the projected revenue increase for each feedstock was reduced proportionately so as to achieve a revenue target of $1.5 billion over the reauthorization period; last, initial tax rates were adjusted so as to achieve the desired revenue increase from each chemical (including the effect of indexing). The feestock price caps used in the first stage of this procedure were determined as the lower of (1) 2 percent of current estimated wholesale price, and (2) the dollar caps in present law ($4.87 per ton for organic substances and $4.45 per ton for inorganic substances).

The committee has addressed a technical problem under prior law concerning the appropriate point at which to levy the tax on the production of xylene. Under the committee amendment, for purposes of this tax, xylene includes separated isomers of xylene only in the case of imported or exported xylene. The committee adopted this rule because it understands that the separated isomers of xylene (meta-xylene, ortho-xylene, and para-xylene) are isolated from a mixed stream of xylenes produced in a reformation process. Accordingly, separated isomers will have been previously taxed (when the mixed stream of xylene is used in the reformation process) except when those separated isomers are imported; thus, the committee expects that no future loss of revenue will occur as a result of this provision. The committee amendment also repeals the prior law tax on xylene for periods before October 1, 1985. Manufacturers, producers, and importers of xylene who paid the tax under prior law will be permitted to obtain a refund of those taxes together with interest. To offset the resulting revenue loss, the tax rate on xylene in Table 1 incorporates an increase over the rates that would otherwise apply, in order to recapture the tax liability that had been expected under prior law for periods before October 1, 1985.

The committee amendment also includes a special rule with respect to nitric acid consumed by the manufacturer in the production of nitrocellulose. Under this rule, nitric acid used in this manner will continue to be taxed at not more than the prior law rate (24 cents per ton) applicable to that substance.

Exemptions

The committee amendment repeals the prior law exemption for coal-derived feedstocks. The remaining present law exemptions are retained. A conforming amendment is made to the exemption for feedstocks that have a transitory existence during a metal refining or smelting process, to provide that this exception also applies to lead.

In addition to prior law exceptions, the committee amendment provides three new exceptions to the chemical feedstocks tax:

Exports of taxable chemicals.—The committee amendment provides that the tax on chemical feedstocks does not apply to feedstocks that are exported from the United States. In particular, any feedstock that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export is exempt from tax.[7] If the purchaser cannot certify in advance that a feedstock will be exported, or if a tax has otherwise been paid on the exported feedstock, the person who paid the tax could claim a refund or credit (without interest) for the amount of the tax previously paid. Such person would be required to pay the amount refunded or credited to the exporter, or to obtain the exporter's written consent to his receiving the credit or refund. The Treasury is authorized to prescribe necessary regulations for administering these provisions.

Substances used to produce animal feed.—An exemption from the feedstock tax is provided for nitric acid, sulfuric acid, or ammonia (or methane used to produce ammonia) used in a qualified animal feed use by the manufacturer, producer, or importer, or sold for use (or for resale for ultimate use) in a qualified animal feed use.

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[7] Rules similar to the rules of section 4221(b) (regarding proof of export for excise tax purposes) would apply for this purpose.

Qualified animal feed use means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements. Under Treasury regulations, if tax is paid and a qualifying substance is subsequently used in a qualified animal feed use, the person so using the substance is entitled to a credit or refund (without interest) of the tax paid. Conversely, if an exemption is allowed and a substance is subsequently sold or used for a non-animal feed purpose, the person so selling or using the substance is to be subject to tax as if such person had manufactured the substance.

Certain recycled metals.—An exemption is provided under the committee amendment for nickel, chromium, cobalt, or lead which is diverted or recovered in the United States from solid waste (as defined under section 1004 of the Solid Waste Disposal Act) as part of a recycling process (and not as part of the original manufacturing or production process). The exemption does not apply to metals which are diverted recovered from the byproduct, coproduct, or other waste of a metal refining, smelting, or other extraction process.

The recycling exemption does not apply for any period during which the taxpayer has failed to complete a corrective action required by EPA (or an authorized State program) under CERCLA or the Solid Waste Disposal Act. The exemption also does not apply to taxable substances which are recycled outside the United States.

For purposes of the credit for previously taxed chemical feedstocks, recycled metals that are exempt under this provision are treated as previously taxed (effectively preventing the imposition of further tax on the metal).

Exchanges of taxable chemicals

The committee amendment provides that, when a manufacturer, producer, or importer exchanges a taxable chemical, as part of an inventory exchange with another person, the exchange is not to be treated as a taxable sale for purposes of the feedstock tax. Instead, the person receiving the chemical in the exchange is to be treated as the manufacturer, producer, or importer (as appropriate), and the tax is to be imposed upon the later sale (or use) by such person. Further, beginning January 1, 1986, the rule would apply only if (1) both parties to the exchange have registered with the Treasury Department as manufacturers, producers, or importers of taxable chemicals, and (2) the person receiving the chemical has notified the person exchanging the chemical of the recipient's registration number and Internal Revenue district.

For purposes of this provision, an inventory exchange is defined as an exchange of properties each of which is property described in section 1221 of the Code (relating to inventory, stock-in-trade, and property held primarily for sale to customers in the ordinary course of trade or business) with respect to both the transferor and transferee of the property. A transaction may be treated as an exchange although one or both parties pay reasonable transportation or similar costs in connection with the exchange.

The provision regarding tax-free exchanges is retroactive to the original effective date of the feedstock tax. However, for exchanges before January 1, 1986, the provision does not apply unless (1) the manufacturer, producer, or importer treated the exchange as a tax-free transaction for purposes of the feedstock tax, and (2) there was an agreement (including a blanket agreement covering a series of transactions) that the person receiving the taxable chemical would be treated as the manufacturer, producer, or importer of the chemical for purposes of the tax.

Termination date

The chemical feedstocks tax expires after September 30, 1990.

Effective date

The re-enactment of and modifications to the chemical feedstocks tax are effective November 1, 1985.

d. Tax on imported chemical derivatives

The committee amendment imposes a new tax on imported substances more than 50 percent of the value of which is derived from taxable feedstocks (as defined under sec. 4662) or taxable petroleum (including petroleum products as defined under sec. 4612) that are used as feedstock materials or as process fuels. The 50-percent test is determined using the predominant method of production for the product. The Treasury Department is directed to issue regulations identifying the specific products which are subject to the tax based on this criterion. The Treasury is to have authority to change this list at any time; however, only items identified in the regulations at the time of sale or use by the importer would be subject to the tax.

The amount of tax imposed on any taxable imported substance is to be equal to the amount of tax which would have been imposed (under secs. 4662 or 4611) on the component taxable feedstocks and petroleum products (that are used as feedstock materials or process fuels in the manufacture of the import), had these components been sold in the United States for an equivalent use. If the importer does not furnish sufficient information (as established by Treasury regulations) to determine the amount of tax under this method, then the tax is to be imposed at a rate of 5 percent of the appraised value of the imported substance at the time of import.

The tax is imposed on the sale or use of taxable substances by the importer thereof. Importers subject to tax include any person entering a taxable substance into the United States for consumption, use, or warehousing. The term "United States" is defined as it is for purposes of the petroleum and feedstocks taxes. If an importer uses a taxable substance, tax is imposed on the importer as if he had sold the substance. Revenues from the tax are not to be paid to Puerto Rico and the Virgin Islands under the cover over provisions of section 7652 of the Code. The tax on imported chemical derivatives does not apply to any substance if the petroleum tax (sec. 4611) or the chemical feedstock tax (sec. 4661) is imposed on the sale or use of such substance.

The tax on imported chemical derivatives is effective on January 1, 1987.

e. Waste management tax

Imposition of tax

The committee amendment includes a new waste management tax designed to raise an estimated $1.5 billion of revenue for the Superfund. This tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. The term "hazardous waste" means any waste listed or identified, on the date that the bill is enacted, under section 3001 of the Solid Waste Disposal Act ("SWDA"), and which is not subsequently delisted.[8] The tax does not apply to wastes that are listed or identified under a State authorized program but are not listed or identified under section 3001 of the SWDA (as of the date of enactment).

For purposes of the tax, a qualified hazardous waste management unit means the specified area of land or structure which (1) isolates the waste within a qualified waste management facility, and (2) is subject to the requirements for obtaining interim status or a final permit (under subtitle C of the SWDA including authorized State programs). A qualified waste management facility means any facility (as defined under Subtitle C of the SWDA) which has received a permit or has been accorded interim status (under section 3005 of the SWDA or an equivalent State program authorized under section 3006 of that Act).

The term "ocean disposal" means the incineration or dumping of hazardous waste over or into ocean waters or certain waters (described in the Marine Protection Research and Sanctuaries Act of 1972).

Tax rates

Under the committee amendment, the tax is imposed at three different rates depending on whether hazardous waste is managed at a (1) land surface disposal unit, (2) waste water treatment unit, or (3) any other type of hazardous waste management unit.

Land surface disposal units.—Hazardous waste received at a qualified hazardous waste management unit that is a landfill, surface impoundment, waste pile, or land treatment unit[9] will be taxed at a rate of $27 per ton in 1986. This rate is to be increased annually at the beginning of each succeeding year, reaching a maximum rate of $43 in 1990 (see Table 2).

Waste water treatment units.—Hazardous waste received at a waste water treatment facility will be taxed at a rate of $0.15 per ton. An exemption is provided for hazardous waste received at certain waste water treatment units that are not subject to required corrective actions (see below).

Other units.—Hazardous waste that is: (1) exported from the United States; (2) received for transport from the United States for purposes of ocean disposal; (3) received at a qualified hazardous waste management unit that is an injection unit; or (4) received at a qualified hazardous waste management unit other than a land surface disposal unit or waste water treatment unit (as defined above) would be taxed at a rate of $2.70 per ton in 1986, increasing to $3 per ton in 1988-1990 (see Table 2).

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[8] For purposes of the waste management tax, hazardous waste does not include any waste the regulation of which is suspended by Congress as of the date of enactment.

[9] These terms would be defined as under EPA regulations issued pursuant to sections 3004 and 3005 of the SWDA.

For purposes of the tax, an injection unit includes, in addition to the injection well, any container, tank, or surface impoundment, that is used to treat or store hazardous waste prior to injection.

Table 2.—Waste Management Tax Rates

[Calendar year tax rates, dollars per ton]

Waste management unit	1986	1987	1988	1989	1990
Land surface disposal	27.00	30.00	31.00	36.00	43.00
Other unit	2.70	3.00	3.00	3.00	3.00
Waste water treatment [1]	0.15	0.15	0.15	0.15	0.15

[1] Waste water treatment units generally are exempt from tax unless subject to a required corrective action.

Exemptions

Removal, remedial, and corrective actions.—The committee amendment exempts from tax the receipt or export of hazardous waste pursuant to (1) a corrective action specified in (a) an initial or final order, or (b) a proposed or final permit (issued by the Administrator under the SWDA or an authorized State), (2) a proposed or final closure plan (approved by the Administrator or a State), (3) a removal or remedial action under the CERCLA which has been selected or approved by the Administrator, or (4) an emergency action to clean up a product spill that the Administrator of the EPA certifies to the Secretary of the Treasury as carrying out the purposes of the CERCLA.

Waste water treatment units.—The receipt of hazardous waste at a waste water treatment unit generally is exempt from tax. For purposes of the tax, a waste water treatment unit is defined as any hazardous waste management unit which is an integral and necessary part of a waste water treatment system, that is: (1) subject to permit requirements under the Clean Water Act (section 402), or (2) subject to pretreatment standards under the Clean Water Act (subsection (b) or (c) of section 307), or (3) a zero discharge treatment system which (a) if it discharged, would satisfy effluent guidelines or pre-treatment requirements promulgated under the Clean Water Act, or (b) absent such guidelines, employs biological treatment. A waste water treatment unit does not include any tank or surface impoundment that stores concentrated treatment residues prior to final disposition or is itself a final disposition unit.

The exemption for hazardous waste received at a waste water treatment unit does not apply if a required corrective action is not completed with respect to such unit. A required corrective action shall be treated as uncompleted during the period beginning on the date that the corrective action is required by the Administrator (or an authorized State) and ending on the date the Administrator (or such State) certifies to the Secretary of the Treasury that such corrective action has been completed. The committee intends that, for purposes of the waste management tax, a corrective action shall not be viewed as uncompleted solely by reason of a long-term monitoring requirement, provided that monitoring is being conducted in compliance with the requirement. The exemption from tax does not apply to any hazardous residues removed from a waste water treatment facility.

Federally owned facilities.—An exemption also applies to any hazardous waste received at a facility owned by the Federal Government. The rationale for this exemption is that the committee amendment does not permit expenditures from the Superfund for remedial action at a site that is owned by the Federal Government.

Back-up tax

Under present environmental statutes, hazardous waste generally is required to be shipped to a hazardous waste facility within 90 days of generation (up to 270 days in the case of certain small generators). In some cases hazardous waste may not be received at a qualified hazardous waste management unit within 270 days of generation as a result of of disposal, treatment, recycling, or storage in a unit that is exempt under the SWDA, or as a consequence of illegal disposal ("midnight dumping"). Under the committee amendment, for waste generated after December 31, 1986, that is not delivered to a qualified hazardous waste management unit within 270 days of generation, tax is imposed on the generator at the land surface disposal rate.

Exemptions from the back-up tax are provided for hazardous waste that is (1) discharged into a publicly owned treatment works (POTW) provided that the discharge is in compliance with the requirements of the Clean Water Act, the SWDA, and other Federal, State, and local requirements, (2) generated by a small generator within the meaning of the SWDA,[10] or (3) specifically exempted from the waste management tax (by reason of receipt at a Federally owned facility or waste arising from certain remedial and removal actions). In addition, the Secretary may by regulation provide additional exemptions (or a reduction in tax rate) consistent with the purposes of the waste management tax. It is intended that such regulations will clarify that, for purposes of the back-up tax, waste that settles in tanks and impoundments shall not be considered generated until such waste is removed from such tank or impoundment. The committee anticipates that the Secretary shall promulgate regulations by January 1, 1987 which provide that the rate of back-up tax with respect to legally managed wastes at facilities not regulated under the SWDA should be determined as the rate which would be applicable to the facility had it been subject to the regular waste management tax. The committee anticipates that such regulations will address the application of the back-up tax with respect to hazardous waste that is not received at a qualified hazardous waste management unit within 270 days of generation as a result of recycling, reuse, or reclamation in a unit that is not regulated under the SWDA.

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[10] Under the SWDA, a small generator is defined as a person that generates less than 100 kilograms of hazardous waste per month.

Procedure and administration

Imposition of tax.—The tax generally is imposed on the owner or operator of a qualified hazardous waste management unit. In the case of ocean disposal, tax is imposed on the person holding the permit issued for transport for ocean disposal. In the case of export, tax is imposed on the exporter of hazardous waste. Liability for the back-up tax is imposed on the generator of the hazardous waste. The tax is imposed on a wet weight basis (i.e., no adjustment is made for the amount of water that may be contained in the waste).

Reduction in tax if prior tax paid.—If tax is paid with respect to hazardous waste (including back-up tax), and a later taxable event takes place with respect to the same waste, the tax on the later taxable event is reduced by the product of (1) the weight of hazardous waste involved in the later taxable event, and (2) the lessor of (a) the highest tax rate previously paid on any taxable event involving the same waste and (b) the rate of tax on the later taxable event (before reduction).

Credit for certain treatment, recycling, and incineration.—Under regulations prescribed by the Secretary, tax paid with respect to hazardous waste (including back-up tax) is allowed as a credit to the extent that such waste is, within 90 days of the event giving rise to tax, managed using qualifying treatment, recycling, or incineration processes. The credit is provided to the owner or operator of the qualifying treatment, recycling, or incineration facility. Processes which qualify for the credit are (1) land-based incineration, (2) methods of treatment or disposal equivalent to land-based incineration, (3) recycling of batteries, and (4) reclamation of certain qualified chemical fuels and solvents (without regard to the 90 day requirement). No credit is allowable if a corrective action (required by the Administrator of the EPA or an authorized State) remains uncompleted with respect to a treatment, recycling, or incineration unit.

A process (including a non-thermal process) shall be treated as the equivalent of land-based incineration if such process (1) conforms to performance standards established by the EPA, and (2) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the standard applicable to incineration on the land. The committee recognizes that EPA performance standards do not presently exist for certain processes (such as burning hazardous waste in an industrial furnace). It is anticipated that the EPA will in such cases provide standards (either by regulation or guidance document) that may be used for purposes of the waste management tax.

The credit for reclaiming chemical fuels and solvents applies to fuels and solvents for commercial or industrial use that the Administrator of the EPA has determined not to be hazardous waste (either by rule or specific delisting).

Possessions.—The U.S. possessions are treated as being part of the United States. Thus, exports of hazardous waste from a possession would be subject to tax. Tax imposed with respect to hazardous waste received from a possession is not paid over to Puerto Rico and the U.S. Virgin Islands under section 7652 of the Code.

Information reporting and penalties.—Persons subject to the waste management tax would be required to submit to the Treasury such information as may be required in regulations, including (but not limited to) information which is required to be provided to EPA under the SWDA. A penalty of $100 per day (but not to exceed $50,000) would be imposed for failure to provide such information, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The penalty is in addition to any other penalty provided by law.

Effective date

The waste management tax is effective for hazardous waste received or exported after December 31, 1985. The back-up tax is effective for waste generated after December 31, 1986.

Termination date

The waste management tax expires after September 30, 1990. The back-up tax does not apply to waste generated after September 30, 1990.

Study of trade impact of waste management tax

The Department of the Treasury is instructed to evaluate the effect of the waste management tax on the ability of domestic manufacturers to compete in international trade, and to deliver recommendations for mitigating any adverse trade impacts to the Committee on Ways and Means by July 1, 1986. The study is to include recommendations regarding an export credit, an import equalization fee, and a cap on the amount of tax for economically distressed industries.

f. Superfund excise tax

General rules

The committee amendment establishes a new Superfund Excise Tax on manufacturers and importers. The tax, which is at a 0.08 percent rate, is imposed on the sale, lease, or import of tangible personal property by the manufacturer or importer of the property. Exports of tangible personal property are exempt. In addition, unprocessed agricultural products, food, fertilizer, and unprocessed timber are exempt. To avoid the imposition of duplicative taxes in multi-stage production, manufacturers will be allowed a credit based on their purchases of tangible personal property (e.g., materials and equipment) allocable to the manufacture of tangible personal property. Small manufacturers (with less than $10 million of otherwise taxable receipts) and small import shipments (under $10,000) are exempt from the tax.

Imposition of the tax

Under the committee amendment, the Superfund Excise Tax is imposed on the sale or lease (in connection with a trade or business) of tangible personal property by the manufacturer. The tax is generally imposed on the sale or leasing of tangible personal property for use, consumption, or disposition in the United States.[11] The tax is not imposed on sales or leases of tangible personal property for use outside the United States. The tax rate is 0.08 percent ($8 per $10,000 of taxable amount). The taxable amount in the case of a sale is the price (in money or the fair market value of other consideration) charged to the purchaser by the seller, including items payable to the seller during the taxable period with respect to the transaction (including Federal, State, and local sales and excise taxes, other than the Superfund Excise Tax and certain other specified Federal excise taxes on manufacturers, imposed on the transaction). A transfer or exchange, other than a gift within the meaning of sections 102 or 170 of the Code, is treated as a sale for purposes of the Superfund Excise Tax.

In the case of a lease by the manufacturer of the taxable property, the taxable amount is the gross lease payments received during the taxable period (including Federal and State sales and excise taxes, other than Superfund Excise Tax and certain other specified Federal excise taxes on manufacturers, imposed on the lease). The tax applies to lease payments received (or considered received under the partial year proration rules described below) during the period the Superfund Excise Tax is in effect, regardless of when the lease was entered into. The manufacturer is liable for the tax.

The sale or lease of tangible personal property by a person who included the cost of such property in qualified inventory cost is treated as a sale or lease by the manufacturer. Thus, the tax applies to the resale or sublease of tangible personal property in the same manner that the tax applies to the original sale or lease of the tangible personal property. This rule prevents the claiming of excess credits with respect to resales or subleases.

The tax is also imposed on the import of tangible personal property into the United States by the importer of the tangible personal property. The taxable amount is the customs value plus customs duties (and any other duties) that may be imposed. The tax on imports is to be collected in the same manner as duties by the customs service. Shipments for which the taxable amount is less than $10,000 are exempt from the tax. The importer is liable for the tax.

The Superfund Excise Tax is deductible in determining Federal income tax liability.

Definitions and special rules

Manufacturer.—"Manufacturer" includes any producer of tangible personal property, including raw materials. The committee intends that the term "manufacturer" be read broadly to include mining and extraction. The categories of mining and manufacturing establishments set forth in Divisions B and D of the Standard Industrial Classification ("SIC") Manual, published by the Office of Management and Budget, generally reflect the committee's intent as to the proper line separating manufacturing from nonmanufacturing activity. The SIC Manual generally excludes from manufacturing agriculture, forestry, fishing, and construction.

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[11] For these purposes, the United States includes the 50 States, the District of Columbia, and any Commonwealth or possession of the United States.

The following activities are not taken into account for purposes of determining whether a person is a manufacturer. Manufacturing does not include services furnished incidental to the storage or transportation of property or the incidental preparation of property by a retailer or wholesaler, including routine assemblage. For example, the incidental preparation of property would include the routine preparation of an automobile for the retail customer by a retail automobile dealer.

Tangible personal property.—Tangible personal property, for purposes of this tax, generally includes all property that is not either real property or intangible property. It includes gases, such as natural gas, and other gaseous materials, but does not include electricity.

Tangible personal property does not include mineral rights (including oil or gas rights), since these interests are themselves considered to be real property. Minerals (or oil or gas) are, however, considered to be tangible personal property after they have been mined or otherwise extracted. Additionally, tangible personal property does not include rights to or interests in intellectual property, such as copyrights or royalty payments on property such as books. These interests are considered to be intangible property. Tangible personal property does, however, include the actual property produced, such as the books or other printed material produced by the manufacturer.

Containers, transportation charges, constructive sales price.—The Secretary of the Treasury is to issue regulations specifying that charges for coverings, containers, and packing are included in the taxable amount. The regulations are also to provide that (1) transportation (including pipeline transportation) and related charges (including insurance and installation) and (2) the Superfund Excise Tax and certain other specified Federal excise taxes imposed on manufacturers (but no other excise tax) are excluded from the taxable amount (but only to the extent the amount of the transportation and related charges is established to the satisfaction of the Secretary in accordance with regulations).

The regulations are also to provide rules establishing a constructive sales price when, for example, a manufacturer sells directly at retail or sells only or primarily to related persons. If a natural gas pipeline company sells natural gas that it has produced itself ("pipeline-owned" production), these Treasury regulations should provide that the constructive sales price for purposes of the Superfund Excise Tax is the price established under the Natural Gas Policy Act and Federal Energy Regulatory Commission (FERC) regulations. These FERC regulations treat pipeline-owned production in the same manner as natural gas produced by an affiliated company. The natural gas is considered sold, for purposes of the Superfund Excise Tax, when it is transferred from the well to the pipeline.

These regulations are to be similar to the rules of section 4216(a) and (b) (relating to containers, packing, and transportation charges, and constructive sales prices for excise tax purposes).

Timing of receipt and expenses.—In computing the taxable amount and qualified inventory costs of a taxpayer, an amount shall be treated as recognized, paid, or incurred at the time it is recognized, paid, or incurred under the taxpayer's method of accounting for Federal income tax purposes.

A special rule applies to installment sales. The taxable amount of the seller includes, for a taxable period, only the principal payments received during that taxable period. The qualified inventory costs of the buyer includes, for a taxable period, only the portion of the costs corresponding to the principalpaid during the taxable period. Thus, the seller is taxed, and the buyer obtains credit for the item purchased, over the term of the installment sale. This rule matches the timing of the seller's tax with the timing of the buyer's credits.

Credit against tax

The committee amendment provides manufacturers a credit against the Superfund Excise Tax that is the greater of two amounts:

(1) The first amount is equal to the Superfund Excise Tax imposed on sales and leases (but not imports), to the extent it does not exceed $8,000.[12] Persons under common control (whether corporations, partnerships, proprietorships, or other entities) are to be treated as one taxpayer for purposes of the standard $8,000 credit. The rules of section 52 (originally drafted for purposes of the targeted jobs credit) apply to determine whether persons are under common control. Thus, a manufacturer (but not an importer) with a taxable amount of $10 million or less would be exempt from the tax ($10 million times 0.08 percent equals $8,000).

(2) The second amount is equal to the qualified inventory costs of the taxpayer multiplied by .08 percent.

The committee recognizes that these rules may provide the taxpayer with a credit against tax that is larger than the tax actually paid. (For example, sellers with less than $10 million of receipts are exempt, and buyers include Superfund and other manufacturers' excise taxes as well as wholesale margins in computing credits.) Excess credits could be avoided by limiting the credit to the amount of tax shown on invoices; however, the desire of the committee to make administration of the tax as simple as possible, in conjunction with the low rate of tax, outweighs concerns about the technical perfection of the credit mechanism.

Qualified inventory costs are direct material and other costs (including the Superfund Excise Tax on such materials) of tangible personal property that are allocable to the manufacturer's inventory and are paid or incurred during the taxable period for which the manufacturer is liable for the Superfund Excise Tax. Thus, the inventory tax accounting rules used in the definition of qualified inventory costs identify the items includible in qualified inventory costs, but not the time when the cost of these items is recognized for purposes of the Superfund Excise Tax. The cost is recognized at the time it is paid or incurred by the manufacturer.

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[12] This amount is prorated for taxable periods that do not include 12-full months. Thus, for example, a manufacturer subject to this tax for 6 months of a 12-month taxable year would be entitled to a maximum credit of $4,000 under this provision. The amount is also prorated for short taxable periods.

Qualified inventory costs for any taxable period are amounts paid or incurred during the taxable period for tangible personal property (other than exempt products and property used to manufacture exempt products) which is allocable to the inventory of a manufacturer under the full absorption method of accounting (sec. 471). Exempt products include food, fertilizer, and unprocessed agricultural, fishery, and timber products (see below). Taxpayers that do not use the full absorption method of inventory accounting for income tax purposes are, neverthelesss, required to use the standards of full absorption accounting for purposes of determining qualified inventory costs.

In lieu of any allowance for depreciation and amortization, with respect to tangible personal property, qualified inventory costs include the amount paid or incurred for [illegible] property in the year placed in service.[13] In the case of any tangible personal property purchased under the installment method, the cost of such property shall be taken into account, for purposes of determining qualified inventory costs, only when paid (see above).

Qualified inventory costs generally include the cost of utilities subject to the Superfund Excise Tax. Thus for example, the cost of natural gas, but not the cost of electricity would be included in qualified inventory costs. Qualified inventory costs include lease payments on qualifying equipment paid or incurred during the period the Superfund Excise Tax is in effect. Qualified inventory costs do not, however, include any cost or amount with respect to an item acquired before the effective date of the tax. Additionally, qualified inventory costs do not include the inventory costs of any non-manufacturing operation. For purposes of computing qualified inventory costs, tangible personal property that is manufactured for lease is treated in the same manner as property that is manufactured for sale.

The amount of the credit allowed to be claimed for a particular taxable period may not exceed the liability for the Superfund Excise Tax. The amount by which the credit for qualified inventory costs exceeds the liability for a particular taxable period may be carried to the next taxable period and added to the credit potentially allowable for that period. No carryover is permitted for the excess, if any, of the standard $8,000 credit over the tax liability for any taxable period. If, for example, a manufacturer had qualified inventory costs of $11 million in a taxable period but received $8 million in taxable receipts, then pre-credit tax liability would be $6,400 (0.08 percent of $8 million) and the tax credit would be $8,800 (0.08 percent of $11 million). The taxpayer would be allowed to claim a credit of $6,400, and could carry over $2,400 ($8,800 minus $6,400) of unused credits to subsequent taxable periods. If in the previous example, qualified inventory costs were $5 million, then tax credits would be $8,000 (the greater of $8,000 and 0.08 percent of $5 million). The taxpayer would be allowed to claim a credit of $6,400, but the unused credit of $1,600 ($8,000 minus $6,400) would not be carried forward to subsequent taxable periods because the excess credit is attributable to the standard $8,000 credit.

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[13] If only a portion of depreciation or amortization is allocable to the inventory of a manufacturer, then the same portion of the amount paid or incurred for the property is allocable to qualified inventory costs.

The committee amendment also provides that the amount of the Superfund Excise Tax credit for any particular item of tangible personal property must be subtracted from the income tax basis of that item. The amount of the basis adjustment is determined as 0.08 percent of the cost of the property included in qualified inventory costs. (In the case of an installment sale, the basis adjustment is computed as 0.08 percent of the principal amount of the installment obligation). Taxpayers not otherwise required to file returns for this tax must file returns and make this basis adjustment to claim the item of tangible personal property in qualified inventory costs.

The credits will carryover in a corporate reorganization in any situation in which there is a carryover of credits under section 381.

Exempt transactions

The committee amendment exempts several types of transactions from the Superfund Excise Tax. First, the Superfund Excise Tax is not imposed on the sale of any property that is to be exported outside the United States, as provided in regulations. The committee intends that these regulations follow the principles of section 4221(b) (relating to excise taxes), and the regulations thereunder, for purposes of proving that an article has been exported. In particular, the committee intends that Treasury regulations adopt the rule in section 4221(b) that provides that the exemption from tax ceases to apply to the sale of an article unless, within six months of the earlier of either the date of sale or date of shipment by the manufacturer, the manufacturer receives proof that the article has been exported.

The committee amendment exempts from the Superfund Excise Tax the sale or lease of tangible personal property by the United States or any other governmental entity or by an organization that is exempt from the income tax under section 501(a) (unless the transaction is part of an unrelated trade or business within the meaning of section 513). Imports by governmental entities and organizations that are exempt from the income tax are subject to the Superfund Excise Tax.

The committee amendment exempts small imports from this tax. A small import is any shipment (whether formal or informal) the taxable amount of which is less than $10,000. The committee intends that "shipment" be interpreted for purposes of this tax in the same manner that it is generally interpreted for customs purposes. Thus, a shipment is generally all articles on one carrier for one consignee on one day.

The committee amendment exempts from the tax food (whether for humans or animals), any product used as fertilizer, unprocessed agricultural or fishery products, and unprocessed timber. The term "food" does not include pharmaceuticals or other forms of medicine, whether available over the counter or by prescription only. Food generally includes beverages, except that it does not include alcoholic beverages. Food does include any additives. Any material, component, or packaging of food or fertilizer is considered to be part of the food or fertilizer. The committee intends that Treasury regulations coordinate the definitions of unprocessed agricultural products and food products with the 5-digit tariff code for purposes of exempting from this tax imports of these items.

Time for filing returns and related administrative matters

Taxpayers are required to file a Superfund excise tax return annually, at the same time they file their regular income tax return. Thus, for example, a corporation that has as its taxable year the calendar year would be required to file the Superfund Excise Tax return by March 15 of the following year, which is the same date that its corporate income tax return (Form 1120) is due. As with other tax returns, the Secretary may grant a reasonable extension of time for filing a Superfund Excise Tax return (*see* sec. 6081).

The committee amendment provides that a manufacturer who has $10 million or less of aggregate receipts from the sale or lease of tangible personal property (excluding exports) is not required to file a Superfund Excise Tax return.[14] These taxpayers have no tax liability because of the credit mechanism (described above). Taxpayers who are under common control are treated as one person for purposes of this exemption from the requirement to file a return. In addition, the Secretary may provide by regulations that certain other taxpayers with more than $10 million of sales or lease receipts, but who may have no tax liability, need not file returns. Taxpayers not otherwise required to file returns must, however, file returns and make the income tax basis adjustment (described above) in order to claim items of tangible personal property in qualified inventory costs and to carry forward credits into future years.

The taxable period for which liability for the Superfund excise tax must be determined is the taxable person's taxable year for purposes of the income tax. If the taxpayer does not have a taxable year for purposes of the income tax, then the taxable period for purposes of the Superfund Excise Tax is the calendar year.

The penalties for failure to file a tax return or to pay tax that are applicable to the income tax (sec. 6651) are made applicable to the Superfund Excise Tax. In addition, the civil negligence penalty (sec. 6653(a)) that is applicable to the income tax is made applicable to the Superfund Excise Tax. The criminal penalties of the Code are generally applicable to the Superfund Excise Tax.

The committee amendment generally requires that the Superfund Excise Tax be deposited quarterly after the first taxable period in which a taxable sale or lease occurs. For the first taxable year that a manufacturer is potentially subject to this tax, any manufacturer with more than $50 million of sales or lease payments determined in the prior year is required to deposit quarterly. (For this purpose, controlled groups are treated as one taxpayer.) In subsequent taxable years, any manufacturer not previously liable for a payment of Superfund Excise Tax will not be required to deposit quarterly. Thus, for example, a manufacturer who paid

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[14] This exemption is prorated for taxable periods that do not include 12 full months. Thus, for example, a manufacturer subject to this tax 6 months of a 12-month taxable year would not be required to file a return if it had less than $5 million of sales or lease receipts in that taxable year. This exemption is also prorated for short taxable periods.

Superfund Excise Tax for 1986 would be required to deposit quarterly in 1987, whereas a manufacturer not required to pay any Superfund Excise Tax in 1986 would pay the Superfund Excise Tax (if any) for which the manufacturer is liable for 1987 with the manufacturer's return. The existing penalty for failure to make deposits (Code sec. 6656) applies to failures to deposit the Superfund Excise Tax. This penalty will not apply, however, if the manufacturer deposits at least the lesser of 90 percent of the tax due or 100 percent of the previous year's liability.[15]

The tax on imports is to be collected in the same manner as duties by customs agents. Consequently, the committee amendment does not specify deposit rules for the tax on imports.

Revenues from the Superfund Excise Tax are not paid to Puerto Rico or the Virgin Islands or any other possession or territory under the cover over provisions of section 7652 of the Code or similar provisions.

The Secretary of the Treasury is authorized to issue regulations to carry out the purposes of the Superfund Excise Tax.

Effective dates

The Superfund Excise Tax applies with respect to taxable amounts received or accrued after December 31, 1985. The tax will not apply with respect to taxable amounts received or accrued after December 31, 1990. In addition, the tax will terminate prior to December 31, 1990, if taxes, general revenues, recoveries, and interest paid into the Superfund Trust Fund total more than $10 billion (as estimated by the Secretary of the Treasury) at the close of any calendar quarter before September 30, 1990. If this occurs, the tax will terminate at the end of that calendar quarter.

The committee amendment provides special rules for any taxable period including but not beginning on January 1, 1986 or January 1, 1990. In the case of such a taxable period, the taxpayer must, in computing its taxable amount and credit for the Superfund Excise Tax, prorate its receipts and purchases on a daily basis. For example, a taxpayer whose taxable year runs from February 1 to January 31 must, under this special rule, prorate $^{31}/_{365}$ of its receipts and $^{31}/_{365}$ of its purchases as representing those amounts for the period for January 1 through January 31, 1986. In addition, the $8,000 standard credit similarly would be prorated.

g. Report on environmental lead

The committee amendment requires that the Administrator of the Agency for Toxic Substances and Disease Registry, in consultation with the Administrator of the Environmental Protection Agency, report to Congress by March 1, 1986 on environmental lead. The cost of the report is to be paid by the Superfund. Specifically, the report must include the following information:

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[15] A taxpayer may avoid this penalty with respect to any year the taxpayer is liable for Superfund Excise Tax by depositing at least 90 percent of the tax due for that taxable year. A taxpayer may, however, avoid this penalty with respect to a year the taxpayer is liable for this tax by depositing 100 percent of the previous year's liability for this tax only if the taxpayer prorates this amount for a full 12-month period. Thus, if a taxpayer was liable for $100,000 of Superfund Excise Tax for its taxable year July 1, 1985 through June 30, 1986, the taxpayer would be considered to have deposited 100 percent of the previous year's liability by depositing $200,000.

(1) The number of children exposed to environmental sources of lead in high enough concentrations to cause adverse health effects;

(2) An estimate of the number of children exposed to lead according to the source of lead;

(3) A statement of the long-term consequences for public health (including mental and physical impairments and death) of unabated exposure to environmental sources of lead; and

(4) Methods and alternatives for reducing the exposure of children to lead.

2. Repeal of Post-Closure Liability Tax and Trust Fund

The committee amendment retroactively repeals the tax on hazardous wastes under section 4681 of the Code, effective October 1, 1983, and terminates the Post-Closure Liability Trust Fund as of that date. Refunds (with interest) would be allowed for taxpayers who paid taxes on hazardous wastes under section 4681.

3. Leaking Underground Storage Tank Trust Fund and Tax

a. Leaking Underground Storage Tank Trust Fund

The committee amendment establishes a new trust fund, the Leaking Underground Storage Tank Trust Fund, under the Internal Revenue Code. The purpose of this trust fund is to pay for the costs of corrective actions involving leaks of petroleum and petroleum products from underground storage tanks (see sec. 9003(h) of the Solid Waste Disposal Act as added by the authorizing committees. The Trust Fund generally is to be used to pay cleanup and related costs involving tanks where no solvent owner can be found, or the owner or operator refuses or is unable to comply properly with a corrective action order necessary to protect human health and the environment. The Trust Fund would also be available to provide grants to States authorized to carry out corrective actions. Claims filed against the Trust Fund may be paid only out of such Trust Fund. Claims in excess of the Trust Fund balance shall be paid in full (to the extent of such balance) in the order in which the claim was finally determined.

The Trust Fund will be financed by (1) a tax on gasoline, diesel and special motor fuels (described below), (2) interest on balances in the Trust Fund, and (3) amounts recovered from responsible parties for costs incurred by the Administrator of the EPA (or by a State) in undertaking a corrective action with respect to the release of petroleum and petroleum products from an underground storage tank.

b. Tax on gasoline, diesel and special motor fuels

Under present law, an excise tax is imposed on gasoline sold by a producer or importer thereof (sec. 4081), and on the sale (or use) of diesel fuel and special motor fuels (sec. 4041). Special motor fuels include benzol, benzene, naptha, liquid petroleum gas, casing head and natural gasoline, and any other liquid (other than kerosene, gas oil, fuel oil, or gasoline) sold for use in motor vehicles or motor boats. No tax is imposed on diesel and special motor fuels used for off-highway business use, or for use on a farm for farming purposes. Gasoline, diesel and special motor fuels sold for use as a fuel in an aircraft in noncommercial aviation are taxable. Exemptions are provided for certain aircraft museums and helicopter uses. Gasoline mixed with certain alcohol products is subject to tax at a reduced rate.

Under the committee amendment, an additional tax of 0.2 cent per gallon is imposed on the sale (or use) of gasoline, diesel and special motor fuels subject to tax under sections 4041 and 4081 of the Code. Revenues from this tax, or equivalent amounts, are to be deposited in the Leaking Underground Storage Tank Trust Fund.

The tax is effective on November 1, 1985. The tax terminates after September 30, 1990. Earlier termination would occur at the end of any month in which the Secretary of the Treasury first determined that cumulative net revenues equal or exceed $850 million.

4. Oil Spill Liability Tax and Trust Fund

a. Oil Spill Liability Trust Fund

Expenditure purposes

The committee amendment establishes an Oil Spill Liability Trust Fund under the Internal Revenue Code. Amounts in the Trust Fund are available for the payment of removal costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities, including costs incurred by government officials in carrying out oil pollution cleanup requirements under the Federal Water Pollution Control Act and the Intervention on the High Seas Act. The fund may also be used to pay removal costs the liability for which is transferred to the fund from the Deepwater Port Liability Fund (established under the Deepwater Port Act of 1974) or the Offshore Oil Pollution Compensation Fund (established under the Outer Continental Shelf Lands Act Amendments of 1978). No fund moneys may be used to pay natural resource and other claims for damages or economic loss pursuant to any of these provisions.

Amounts in the Trust Fund are available to pay contributions to the fund established by the 1984 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, if this convention (and a related liability convention) comes into force with respect to the United States. Trust Fund moneys may also be used to pay administrative costs. However, such contributions shall be reduced to the extent that the International Fund is used for expenditure purposes that are not permissible uses of the Oil Spill Liability Trust Fund.

The liability of the Trust Fund cannot exceed $200 million for any single incident. The committee amendment also states that no claim (other than a claim for removal costs) could be paid to the extent that payment would reduce the amount in the Trust Fund below $30 million.[16]

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[16] Under a committee amendment, only claims for removal costs could be paid by the fund.

Claims against the Trust Fund can be paid only out of the Trust Fund. If the fund is unable to pay all claims, claims will be paid in full (subject to the limitations above) in the order in which the claims are finally determined.

Other financing sources

The following amounts are to be deposited in the Trust Fund:

(1) A 1.3-cents-per-barrel tax on crude oil and imported petroleum products (described below),

(2) Amounts recovered, collected, or received from responsible parties under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act, as reported by the authorizing committees,

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund after the new Trust Fund and petroleum tax become effective,

(4) Income on Trust Fund investments, and

(5) The proceeds of authorized borrowing by the Fund (which is not to exceed $300 million in outstanding indebtedness at any time).

Effective date

These provisions are effective on January 1, 1986.

b. Tax on petroleum

Imposition of tax

The committee amendment imposes a new excise tax of 1.3 cents per barrel on domestic crude oil and on petroleum products (including crude oil) imported into the United States. The tax is imposed on the same crude oil and petroleum products, and is subject to the same definitional and other provisions, as is the Superfund petroleum tax (discussed above), and is in addition to that tax. Amounts equivalent to the revenues from the tax are to be deposited in the Oil Spill Liability Trust Fund.

The collection, enforcement, and penalty provisions that are applicable to the Superfund petroleum tax are also applicable to this petroleum tax.

Effective date

The tax applies from January 1, 1986 through September 30, 1990.

5. Coordination With Other Provisions

The committee amendment provides that any provision of the Act outside the Title reported by the Committee on Ways and Means, which provision (1) imposes any tax, premium, or fee, (2) establishes any trust fund, or (3) authorizes any trust fund expenditures not also authorized by that title, is to have no force or effect.

III. BUDGET EFFECTS

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effect on the budget of the committee amendment to title IV of the bill (H.R. 2817).

The following table shows the estimated revenue effects of the tax provisions of the committee amendment.

Estimated Revenue Effects of Committee Amendment to H.R. 2817, Fiscal Years 1986–1991

[In millions of dollars]

Tax Provision	1986	1987	1988	1989	1990	1991	Total
Superfund Taxes							
Petroleum tax (3.85 cents/barrel)	172	203	205	206	207	12	1,005
Chemical feedstocks tax (see Table 1 for rates)	167	290	319	343	366	22	1,507
Waste management tax	207	319	328	324	317	19	1,514
Superfund excise tax (0.08 percent)	285	782	846	920	1,003	661	4,497
Tax on imported chemical derivatives		12	18	18	18	1	67
Total Superfund tax receipts	831	1,606	1,716	1,811	1,911	715	8,590
Leaking Underground Storage Tank Trust Fund							
Tax on gasoline, other motor fuels (0.2 cents/gal.)	214	245	241	150			850
Oil Spill Liability Fund Tax							
Petroleum tax (1.3 cents/barrel)	47	69	69	70	70	4	329
Refund of Post-closure Trust Fund Tax	−15						−15
Total Tax Revenues to Trust Funds	1,077	1,920	2,026	2,031	1,981	719	9,754
Net Increase in Budget Receipts (after income tax offsets)	804	1,440	1,520	1,523	1,486	539	7,312

NOTE.—The Treasury Department agrees with these estimates.

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the committee on the motion to report the committee amendment to the bill (H.R. 2817). The committee amendment was ordered favorably reported by voice vote.

B. Other Matters

In compliance with clause 2(l)(3) and 2(l)(4) of Rule XI of the House of Representatives, the following statements are made with respect to the committee action on the committee amendment to the bill.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was a result of the committee's review of the financing of the Superfund and the proposed expansion of the Superfund program by the authorizing committees that the committee concluded that it is appropriate to reenact and expand the revenue sources for the Superfund for 5 years. (The authorizing committees extended the Superfund program for 5 years, fiscal years 1986–1990, in titles I–III of H.R. 2817.)

In addition, the committee decided to establish two other trust funds, financed primarily by earmarked excise taxes: a Leaking Underground Storage Tank Trust Fund and an Oil Spill Liability Trust Fund. These trust funds will finance specific clean up programs included in H.R. 2817 by the authorizing committees.

The Committee on Ways and Means held a public hearing on Superfund financing proposals on May 9, 1985. The committee marked up a revenue title (title IV) for H.R. 2817 on October 17 and 23, 1985.

Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made by the committee amendment as reported involve no new or increased tax expenditures.

Budget Authority

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made by the committee amendment as reported involve new budget authority (for payment of interest on refunds of the repealed post-closure waste tax) of less than $4 million for fiscal year 1986.

Congressional Budget Office Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee states that a statement from the Director of the Congressional Budget Office concerning the committee's budget estimates has not been received at the time of filing this report.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted by the Committee on Government Operations regarding the subject matter of the committee amendment.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of the committee amendment to H.R. 2817 could result in increased prices in the national economy to the extent that the increased or new excise taxes contained in the committee amendment are passed on to the purchasers of the taxed commodities.

The tax on petroleum will increase from 0.79 cent per barrel under prior law to 5.15 cents per barrel (3.85 cents for the Superfund plus 1.3 cents for the new Oil Spill Fund). The tax on chemical feedstocks will decline slightly for certain chemicals and increase for others as compared to prior law. Exported chemicals are exempt from the tax. Beginning in 1987, this tax will be indexed. Also beginning in 1987, there will be a tax imposed on imports of certain products derived from taxable feedstocks, as defined under Treasury regulations. Revenues from the tax on chemicals will go into the Superfund.

A new waste management tax will be imposed beginning in 1986 (which will increase each year for 5 years, see Table 2), as well as a new manufacturers excise tax of 0.08 percent (with no tax on small manufacturers having $10 million or less in taxable receipts per year). Revenues from these taxes will also go into the Superfund.

An additional tax of 0.2 cent per gallon will be imposed on gasoline, diesel fuel, and other motor fuels; the revenues from this tax will go into a new Leaking Underground Storage Tank Trust Fund.

Further, the committee amendment repeals the Post-closure Liability Trust Fund and refunds the prior law post-closure waste tax to the original taxpayers.

Since these excise taxes are deductible for income tax purposes, the net impact on overall prices in the affected industries and the economy will be lessened. The increased costs attributable to the excise taxes will be relatively small in relation to the overall price of the taxed commodities, and will be offset further in savings to the nation's environment and health from the cleaning up of hazardous wastes and petroleum spills provided for under the trust funds.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of title IV. The changes made to existing law by the complete bill as reported by the Committee on Energy and Commerce are shown on pages 143 through 248 of House Report 99-253, Part I, August 1, 1985.

For the information of the Members, provisions of law affected by the Committee on Ways and Means' amendment to the bill are shown here as follows: existing law proposed to be omitted both by the Committee on Energy and Commerce and by the Committee on Ways and Means is enclosed in black brackets, existing law proposed to be omitted only by the Committee on Energy and Commerce is enclosed in black parentheses, existing law proposed to be omitted only by the Committee on Ways and Means is printed in linetype, new matter proposed to be inserted by both committees is printed in italic, new matter proposed to be inserted only by the Committee on Energy and Commerce is printed in italic linetype, new matter proposed to be inserted only by the Committee on Ways and Means is printed in boldface roman, and existing law in which no change is proposed is shown in roman.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

Sec. 101. In General.—
(1) * * *

* * * * * * *

(11) "Fund" or "Trust Fund" means the Hazardous Substance (Response Fund established by section 221 of this Act) **Superfund established by section 9505 of the Internal Revenue Code of 1954** [or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act];

* * * * * * *

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

* * * * * * *

~~Subtitle B—Establishment of Hazardous Substance Response Trust Fund~~

~~SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.~~

~~(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous~~ [Substance Response Trust Fund] ~~*Substances Superfund*" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.~~

~~(b) TRANSFERS TO RESPONSE TRUST FUND.—~~

~~(1) AMOUNTS EQUIVALENT TO CERTAIN TAXES, ETC.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to the Response Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this subtitle referred to as the "Secretary") to be equivalent to—~~

~~(A) the amounts received in the Treasury under section 4611 or 4661 of the Internal Revenue Code of 1954,~~

~~(B) the amounts recovered on behalf of the Response Trust Fund under this act,~~

~~(C) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,~~

~~(D) penalties assessed under title I of this Act, and~~

~~(E) punitive damages under section 107(c)(3) of this Act.~~

~~(2) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated to the Emergency Response Trust Fund for fiscal year—~~

~~(A) 1981, $44,000,000,~~

~~(B) 1982, $44,000,000,~~

~~(C) 1983, $44,000,000,~~

~~(D) 1984, $44,000,000, and~~

~~(E) 1985, $44,000,000, plus an amount equal to so much of the aggregate amount authorized to be appropriated under subparagraphs (A), (B), (C), and (D) as has not been appropriated before October 1, 1984.~~

~~(3) TRANSFER OF FUNDS.—There shall be transferred to the Response Trust Fund—~~

~~(A) one-half of the unobligated balance remaining before the date of the enactment of this Act under the Fund in section 311 of the Clean Water Act, and~~

~~(B) the amounts appropriated under section 504(b) of the Clean Water Act during any fiscal year.~~

[(c) EXPENDITURES FROM RESPONSE TRUST FUND.—

[(1) IN GENERAL.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act,

[(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) Limitations on expenditures.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) and (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

~~*(C) Expenditures from Trust Fund.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of title I of this Act.*~~

~~SEC. 222. LIABILITY OF UNITED STATES LIMITED TO AMOUNTS IN TRUST FUND.~~

~~(a) General Rule.—Any claim filed against the Response Trust Fund may be paid only out of such Trust Fund. Nothing in this Act (or in any amendment made by the Act) shall authorize the payment by the United States Government of any additional amount with respect to any such claim out of any source other than the Response Trust Fund.~~

~~(b) Order in Which Unpaid Claims Are To Be Paid.—If at any time the Response Trust Fund is unable (by reason of subsection (a) or the limitation of section 221(c)(2)) to pay all of the claims payable out of such Trust Fund at such time, such claims shall, to the extent permitted under subsection (a), be paid in full in the order in which they were finally determined.~~

~~SEC. 223. ADMINISTRATIVE PROVISIONS.~~

~~(a) Method of Transfer.—The amounts appropriated by section 221(b)(1) shall be transferred at least monthly from the general fund of the Treasury to the Response Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in such section. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.~~

~~(b) Management of Trust Fund.—~~

~~(1) Report.—The Secretary shall be the trustee of the response Trust Fund, and shall report to the Congress for each fiscal year ending on or after September 30, 1981, on the financial condition and the results of the operations of such Trust Fund during such fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.~~

~~(2) Investment.—It shall be the duty of the Secretary to invest such portion of such Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Trust Fund and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United~~

~~States of comparable maturities. The income on such investments shall be credited to and form a part of such Trust Fund.~~

~~(c) AUTHORITY TO BORROW.—~~

~~(1) IN GENERAL.—There are authorized to be appropriated to the Response Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.~~

~~(2) LIMITATIONS ON ADVANCES TO RESPONSE TRUST FUND.—~~

~~(A) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Response Trust Fund which is outstanding at any one time shall not exceed an amount which the Secretary estimates will be equal to the sum of the amounts which will be appropriated or transferred to such Trust Fund under paragraph (1)(A) of section 221(b) of this Act for the following 12 months, and~~

~~(B) ADVANCES FOR PAYMENT OF RESPONSE COSTS.—No amount may be advanced after March 31, 1983, to the Response Trust Fund for the purpose of paying response costs described in section 111(a) (1), (2), or (4), unless such costs are incurred incident to any spill the effects of which the Secretary determines to be catastrophic.~~

~~(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Response Trust Fund which is outstanding at any one time for the purpose of paying costs other than costs described in section 111(a) (1), (2), or (4) shall not exceed one-third of the amount of the estimate made under subparagraph (A).~~

~~(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.~~

~~(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.~~

Subtitle C—Post-Closure Tax and Trust Fund

* * * * * * *

[SEC. 232/—POST-CLOSURE LIABILITY TRUST FUND.

[(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

[(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

[(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.]

TITLE III—MISCELLANEOUS PROVISIONS

* * * * * * *

[EXPIRATION, SUNSET PROVISION

[SEC. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, which ever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

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Internal Revenue Code of 1954

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 31—RETAIL EXCISE TAXES

* * * * * * *

Subchapter A—Special Fuels

* * * * * * *

SEC. 4041. IMPOSITION OF TAX.

(a) DIESEL FUEL AND SPECIAL MOTOR FUELS.—

(1) DIESEL FUELS.—* * *

* * * * * * *

(d) ADDITIONAL TAX ON DIESEL FUEL AND SPECIAL MOTOR FUELS TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) DIESEL FUEL.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on any liquid (other than a product taxable under section 4081)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in such vehicle, or

(B) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under subparagraph (A).

(2) SPECIAL MOTOR FUELS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2

cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or paragraph (1) of this subsection)—

(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

(3) Termination.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b).

~~(d)~~ **(e)** Additional Tax.—If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c)(1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.

(f) Exemption for Farm Use.—

(1) Exemption.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) Use on a farm for farming purposes.—For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(3) Termination.—~~On~~ **Except with respect to the taxes imposed by subsection (d), on** and after October 1, 1988, paragraph (1) shall not apply.

(g) Other Exemptions.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section—

(1) on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3));

(2) with respect to the sale of any liquid for the exclusive use of any State, any political subdivision of a State, or the District of Columbia, or with respect to the use by any of the foregoing of any liquid as a fuel;

(3) upon the sale of any liquid for export, or for shipment to a possession of the United States, and in due course so exported or shipped; and

(4) with respect to the sale of any liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel.

For purposes of paragraph (4), the term "nonprofit educational organization" means an educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. ~~Paragraphs~~ **Except**

with respect to the taxes imposed by subsection (d), paragraphs (2) and (4) shall not apply on and after October 1, 1988.

* * * * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

* * * * * * *

PART III—PETROLEUM PRODUCTS

* * * * * * *

Subpart A—Gasoline

* * * * * * *

SEC. 4081. IMPOSITION OF TAX.

~~(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.~~

~~(b) TERMINATION.—On and after October, 1, 1988, the taxes imposed by this section shall not apply.~~

(a) TAX TO FUND HIGHWAY PROGRAM—

(1) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

(2) TERMINATION.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

(b) ADDITIONAL TAX TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) IN GENERAL.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

(2) TERMINATION.—

(A) IN GENERAL.—The tax imposed by paragraph (1) shall not apply after the earlier of—

(i) September 30, 1990, or

(ii) the last day of the termination month.

(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

(C) NET REVENUES.—For purposes of subparagraph (B), the term "net revenues" means the excess of gross revenues over amounts payable by reason of section 9506(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits).

* * * * * * *

Subchapter G—Exemptions, Registration, Etc.

*   *   *   *   *   *   *

SEC. 4221. CERTAIN TAX-FREE SALES.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121) on the sale by the manufacturer (or under section 4051 on the first retail sale) of an article—

(1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture,

(2) for export, or for resale by the purchaser to a second purchaser for export,

(3) for use by the purchaser as supplies for vessels or aircraft,

(4) to a State or local government for the exclusive use of a State or local government, or

(5) to a nonprofit educational organization for its exclusive use, but only if such exportation or use is to occur before any other use.

Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, 4071, or ~~4081,~~ **4081(a)**, paragraphs (4) and (5) shall not apply on and after October 1, 1988.

*   *   *   *   *   *   *

CHAPTER 38—ENVIRONMENTAL TAXES

SUBCHAPTER A. Tax on petroleum.
SUBCHAPTER B. Tax on certain chemicals.
[SUBCHAPTER C. Tax on hazardous waste.]
Subchapter C. Hazardous waste management tax.
Subchapter D. Tax on certain imported substances.
Subchapter E. Superfund excise tax.

Subchapter A—Tax on Petroleum

*   *   *   *   *   *   *

SEC. 4611. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax of ~~0.79 cent~~ **3.85 cents** a barrel on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) TAX ON CERTAIN USES AND EXPORTATION.—

(1) IN GENERAL.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax of ~~0.79 cent~~ **3.85 cents** a barrel is hereby imposed on such crude oil.

(2) EXCEPTION FOR USE ON PREMISES WHERE PRODUCED.—Paragraph (1) shall not apply any use of crude oil for extracting oil

or natural gas on the premises where such crude oil was produced.

[The following amendments to section 4611 (a) and (b) shall take effect January 1, 1986:]

SEC. 4611. IMPOSITION OF TAX.

(a) General Rule.—There is hereby imposed a tax ~~of~~ **3.85 cents** ~~a barrel~~ **at the rate specified in subsection (c)** on—

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use, or warehousing.

(b) Tax on Certain Uses and Exportation.—

(1) In general.—If—

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax ~~of~~ 0.79 cent **3.85 cents** a barrel is hereby imposed on such crude oil.

(2) Exception for use on premises where produced.—Paragraph (1) shall not apply any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

(c) Persons Liable for Tax.—

(1) Crude oil received at refinery.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) Imported petroleum product.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) Tax on certain uses or exports.—The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

~~(d) Termination.—The taxes imposed by this section shall not apply after September 30,~~ [1985] ~~*1990,* except that if on September 30,~~ [1983] ~~*1988,* or September 30,~~ [1984] ~~*1989*—~~

~~(1) the unobligated balance in the Hazardous Substance Response Fund as of such date exceeds~~ [$900,000,000] ~~*$4,900,000,000*~~ ~~and~~

~~(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed~~ [$500,000,000] ~~*$2,700,000,000*~~ ~~on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above.~~

~~then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).~~

(d) Application of Taxes.—The taxes imposed by this section shall apply after October 31, 1985, and before October 1, 1990.

[Effective January 1, 1986, the following amendments to section 4611 apply:]

(c) Rate of Tax.—

(1) In general.—The rate of the taxes imposed by this section is the sum of—

(A) the Hazardous Substance Superfund financing rate, and

(B) the Oil Spill Liability Trust Fund financing rate.

(2) RATES.—For purposes of paragraph (1)—

(A) the Hazardous Substance Superfund financing rate is 3.85 cents a barrel, and

(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.

~~(c)~~(d) PERSONS LIABLE FOR TAX.—

(1) CRUDE OIL RECEIVED AT REFINERY.—The tax imposed by subsection (a)(1) shall be paid by the operator of the United States refinery.

(2) IMPORTED PETROLEUM PRODUCT.—The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

(3) TAX ON CERTAIN USES OR EXPORTS.—The tax imposed by subsection (b shall be paid by the person using or exporting the crude oil, as the case may be.

~~(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30,~~ [1985] 1990, ~~except that if on September 30,~~ [1983] ~~1988, or September 30,~~ [1984] ~~[*1989*—~~

~~(1) the unobligated balanced in the Hazardous Substance Response Trust Fund as of such date exceeds~~ [$900,000,000] ~~*$4,900,000,000* and~~

~~(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed~~ [$500,000,000] ~~$2,700,000,000 on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,~~

~~then no tax shall be imposed by this section during the first calendar year beginning after the date referred to paragraph (1).~~

(e) APPLICATION OF TAXES.—

(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after October 31, 1985, and before October 1, 1990.

(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1985, and before October 1, 1990.

* * * * * * *

(Subchapter B—Tax on Certain Chemicals

(Sec. 4661. Imposition of tax.
(Sec. 4662. Definition and special rules.

SEC. 4661. IMPOSITION OF TAX

((a) GENERAL RULE.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

((b) **AMOUNT OF TAX.** ***The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:)***

~~***Subchapter B—Tax on Certain Chemicals***~~

~~***Sec. 4661. Imposition to tax.***~~
~~***Sec. 4662. Definitions and special rules.***~~

~~(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.~~

~~(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:~~

In the case of:	[The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24]

~~*In the case of:*~~	~~*The tax is the following amount per ton*~~
~~*Acetylene*~~	~~$4.87~~
~~*Benzene*~~	~~4.87~~
~~*Butane*~~	~~4.87~~
~~*Butylene*~~	~~4.87~~
~~*Butadiene*~~	~~4.87~~
~~*Ethylene*~~	~~4.87~~
~~*Methane*~~	~~3.44~~
~~*Naphthalene*~~	~~4.87~~
~~*Propylene*~~	~~4.87~~
~~*Toluene*~~	~~4.87~~
~~*Xylene*~~	~~4.87~~
~~*Ammonia*~~	~~2.64~~
~~*Antimony*~~	~~4.45~~
~~*Antimony trioxide*~~	~~3.75~~
~~*Arsenic*~~	~~4.45~~

~~In the case of:~~	~~The tax is the following amount per ton:~~
~~Arsenic trioxide~~	~~3.41~~
~~Barium sulfide~~	~~2.30~~
~~Bormine~~	~~4.45~~
~~Cadmium~~	~~4.45~~
~~Chlorine~~	~~2.70~~
~~Chromium~~	~~4.45~~
~~Chromite~~	~~1.52~~
~~Potassium dichromate~~	~~1.69~~
~~Sodium dichromate~~	~~1.87~~
~~Cobalt~~	~~4.45~~
~~Cupric sulfate~~	~~1.87~~
~~Cupric oxide~~	~~3.59~~
~~Cuprous oxide~~	~~3.97~~
~~Hydrochloric acid~~	~~0.29~~
~~Hydrogen flouride~~	~~4.23~~
~~Lead oxide~~	~~4.14~~
~~Mercury~~	~~4.45~~
~~Nickel~~	~~4.45~~
~~Phosphorus~~	~~4.45~~
~~Stannous chloride~~	~~2.85~~
~~Stannic chloride~~	~~2.12~~
~~Zinc chloride~~	~~2.22~~
~~Zinc sulfate~~	~~1.90~~
~~Potassium hydroxide~~	~~0.22~~
~~Sodium Hydroxide~~	~~0.28~~
~~Sulfuric acid~~	~~0.26~~
~~Nitric acid~~	~~0.24~~

In the case of:	**The tax (before any inflation adjustment) is the following amount per ton:**
Organic substances	
Acetylene	**$4.87**
Benzene	**4.87**
Butadiene	**4.87**
Butane	**4.87**
Butylene	**4.87**
Ethylene	**4.87**
Methane	**3.44**
Napthalene	**4.87**
Propylene	**4.87**
Toluene	**4.87**
Xylene	**9.81**
Inorganic substances	
Ammonia	**3.40**
Antimony trioxide	**4.45**
Antimony	**4.09**
Arsenic	**4.45**
Arsenic trioxide	**3.91**
Barium sulfide	**3.34**
Bromine	**4.45**
Cadmium	**4.45**
Chlorine	**3.34**
Chromite	**1.52**
Chromiumm	**4.45**
Cobalt	**4.45**
Cupric oxide	**4.01**
Cupric sulfate	**3.12**
Cuprous oxide	**4.20**
Hydrochloric acid	**0.75**
Hydrogen flouride	**4.34**
Lead	**2.15**
Lead Oxide	**4.29**
Mercury	**4.45**

In the case of:	The tax (before any inflation adjustment) is the following per ton: amount
Nickel	4.45
Nitric acid	2.01
Phosphorous	4.45
Potassium dichromate	3.03
Potassium hydroxide	2.27
Sodium dichromate	3.12
Sodium hydroxide	1.94
Stannic chloride	3.25
Stannous chloride	3.62
Sulfuric acid	0.63
Zinc chloride	3.30
Zinc sulfate	3.13.

[(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).]

~~*(c) Termination.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).*~~

(c) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—

(1) In General.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

(2) APPLICABLE INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

(i) the applicable price index for the preceding calendar year, exceeds

(ii) the applicable price index for 1985.

(B) APPLICABLE PRICE INDEX.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

(i) in the case of organic substances, the producer price index for basic organic chemicals as published by the Secretary of Labor, or

(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

(3) ROUNDING.—IF ANY INCREASE DETERMINED UNDER PARAGRAPH (1) IS NOT A MULTIPLE OF 1 CENT, SUCH INCREASE SHALL BE ROUNDED TO THE NEAREST MULTIPLE OF 1 CENT (OR, IF THE INCREASE DETERMINED UNDER PARAGRAPH (1) IS A MULTIPLE OF ½ OF 1 CENT, SUCH INCREASE SHALL BE INCREASED TO THE NEXT HIGHER MULTIPLE OF 1 CENT).

(d) APPLICATION OF TAXES.—The tax imposed by this section shall apply after October 31, 1985, and before October 1, 1990.

[SEC. 4662. DEFINITIONS AND SPECIAL RULES.

[(a) DEFINITIONS.—For purposes of this subchapter—

[(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

❨(A) which is listed in the table under section 4661(b), and

❨(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehoursing.

❨(2) United States.—The term "United States" has the meaning given such term by section 4612(a)(4).

❨(3) Importer.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

❨(4) Ton.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

❨(5) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

❨(b) Exceptions: Other Special Rules.—For purposes of this subchapter—

❨(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacturer or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

❨(2) Substances used in the production of fertilizer.—

❨(A) In general.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

❨(B) Qualified fertilizer substance.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

❨(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

❨(ii) sold for use by any purchaser in a qualified fertilizer use, or

❨(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

❨(C) Qualified fertilizer use.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

❨(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

❨(3) Sulfuric acid produced as a byproduct of air pollution control.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.❩

~~SEC. 4662. DEFINITIONS AND SPECIAL RULES.~~

~~(a) DEFINITIONS.—For purposes of this subchapter—~~

~~(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term "taxable chemical" means any substance—~~

~~(A) which is listed in the table under section 4661(b), and~~

~~(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.~~

~~(2) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).~~

~~(3) IMPORTER.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.~~

~~(4) TON. The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.~~

~~(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.~~

~~(b) EXCEPTIONS; OTHER SPECIAL RULES.—For purposes of this subchapter—~~

~~(1) METHANE OR BUTANE USED AS A FUEL.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).~~

~~(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—~~

~~(A) IN GENERAL.—In the case of a nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).~~

~~(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term "qualified fertilizer substance" means any substance—~~

~~(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,~~

~~(ii) sold for use by any purchaser in a qualified fertilizer use, or~~

~~(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.~~

~~(C) QUALIFIED FERTILIZER USE.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.~~

~~(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.~~

~~(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.~~

[(4) Substances derived from coal.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.]

~~*(4) Substances derived from coal.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.*~~

[(5)] (4)~~*Substances used in the production of motor fuel, etc.—*~~

((A) In general.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

((B) Qualified fuel substance.—For purposes of this section, the term "qualified fuel substance" means any substance—

((i) used in a qualified fuel use by the manufacturer, producer, or importer,

((ii) sold for use by any purchaser in a qualified fuel use, or

((iii) sold for resale by any purchaser for use, or resale for ultimate use, in qualified fuel use.

((C) Qualified fuel use.—For purposes of this subsection, the term "qualified fuel use" means—

((i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

((ii) any use as such a fuel.

((D) Chemicals to which paragraph applies.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

((E) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subpararaph (A), the first person who sells or uses such chemical other than a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.)

[(6)] Substance having transitory presence during refining process, etc—

((A) In general.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

((B) Chemicals to which subparagraph (A) applies.—The chemicals described in this subparagraph are—

((i) barium sulfide, cupric sulfate, cupric oxide, cupropus oxide, lead, lead oxide, zinc chloride, and zinc sulfate, and

((ii) any solution or mixture containing any chemical described in clause (i).

((C) Removal treated as use.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.)

~~(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—~~

~~(A) IN GENERAL.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).~~

~~(B) QUALIFIED FUEL SUBSTANCE.—For purposes of this section, the term "qualified fuel substance" means any substance—~~

~~(i) used in a qualified fuel use by the manufacturer, producer, or importer,~~

~~(ii) sold for use by any purchaser in a qualified fuel use, or~~

~~(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.~~

~~(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—~~

~~(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or~~

~~(ii) any use such a fuel.~~

~~(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.~~

~~(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.~~

~~(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—~~

~~(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).~~

~~(B) Chemicals to which subparagrah (a) applies.—The chemicals described in this subparagraph are—~~

~~(i) barium sulfide, cuprice sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and~~

~~(ii) any solution or mixture containing any chemical described in clause (i).~~

~~(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.~~

~~(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—~~

~~(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).~~

~~(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term "qualified animal feed substance" means any substance—~~

~~(i) used in a qualified animal feed use by the manufacturer, producer, or importer,~~

~~*(ii) sold for use by any purchaser in a qualified animal feed use, or*~~

~~*(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.*~~

~~*(C) QUALIFIED ANIMAL FEED USE.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.*~~

~~*(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.*~~

(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term "xylene" does not include any separated isomer of xylene.

(7) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton.

(8) RECYCLED CHROMIUM, COBALT, NICKEL, AND LEAD.—

(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

(D) SOLID WASTE.—For purposes of this paragraph, the term "solid waste" has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal.

(9) Substances used in the production of animal feed.—

(A) In general.—In the case of—

(i) nitric acid,

(ii) sulfuric acid,

(iii) ammonia, or

(iv) methane used to produce ammonia, which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

(B) Qualified animal feed substance.—For purposes of this section, the term "qualified animal feed substance" means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) Qualified animal feed use.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(c) Use by Manufacturer, Etc., Considered Sale.--Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.**]**

~~*(c) Use of Manufacturer, Etc., Considered Sale.—Except as provided in subsection (b), if any person manufacturers, produces, or imports a taxable chemical and uses such chemical then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.*~~

(c) Use and Certain Exchanges by Manufacturer, Etc.—

(1) Use treated as sale.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(2) Special rules for inventory exchanges.—

(A) In general.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

(i) such exchange shall not be treated as a sale, and

(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

(B) Registration requirement.—Subparagraph (A) shall not apply to any inventory exchange unless—

(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

(C) Inventory exchange.—For purposes of this paragraph, the term "inventory exchange" means an exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1).

❨(d) Refund or Credit for Certain Uses.—

❨(1) In general.—Under regulations prescribed by the Secretary, if—

❨(A) a tax under section 4661 was paid with respect to any taxable chemical, and

❨(B) such chemical was used by any person in the manufacture or production of any other substance❩ [the sale of which by such person would be taxable under such section,] **which is a taxable chemical,**

❨then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced **(or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section).**

❨(2) Use as fertilizer.—Under regulations prescribed by the Secretary, if—

❨(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

❨(B) any person uses such substance aa a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

❨(3) Use as qualified fuel.—Under regulations prescribed by the Secretary, if—

❨(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection❩ [(b)(5)] **(b)(4)** ❨without regard to subsection❩ [(b)(5)] **(b)(4), and**

❨(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection❩ [(b)(5)] **(b)(4),** ❨shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were overpayment of tax imposed by this section.❩

~~*(d) REFUND OR CREDIT FOR CERTAIN USES.—*~~

~~*(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—*~~

~~*(A) a tax under section 4661 was paid with respect to any taxable chemical, and*~~

~~*(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,*~~

~~*then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any cases to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substances manufactured or produced.*~~

~~*(2) USE AS FERTILIZER.—Under regulations prescribed by the Secretary, if—*~~

~~*(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and*~~

~~*(B) any person uses such substance as a qualified fertilizer substance,*~~

~~*then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit of refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.*~~

~~*(3) USE AS QUALIFIED FUEL.—Under regulations prescribed by the Secretary, if—*~~

~~*(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and*~~

~~*(B) any person uses such chemical as a qualified fuel substance,*~~

~~*then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.*~~

~~*(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—*~~

~~*(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and*~~

~~*(B) any person uses such substance as a qualified animal feed substance,*~~

~~*then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.*~~

(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) TAX-FREE SALES.—

(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

(2) CREDIT OR REFUND WHERE TAX PAID.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if—

(i) tax under section 4661 was paid with respect to any taxable chemical, and

(ii) such chemical was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical, or

(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[(e)] **(f)** (DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provision of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 461.*)*

~~*(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.*~~

[Subchapter C—Tax on Hazardous Wastes

Sec. 4681. Imposition of tax.
Sec. 4682. Definitions and special rules.

SEC. 4681. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

[(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

SEC. 4682. DEFINITIONS AND SPECIAL RULES.

[(a) DEFINITIONS.—For purposes of this subchapter—

[(1) HAZARDOUS WASTE.—The term "hazardous waste" means any waste—

[(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

[(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

[(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term "qualified hazardous waste disposal facility" means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

[(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

[(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

[(d) APPLICATION OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.]

Subchapter C—Hazardous Waste Management Tax

Sec. 4671. Waste management tax.
Sec. 4672. Exemptions; reduction of tax where prior taxable event.
Sec. 4673. Special rules for waste water treatment, incineration, etc.
Sec. 4674. Backup tax on generator.
Sec. 4675. Definitions and special rules.

SEC. 4671. WASTE MANAGEMENT TAX.

(a) IMPOSITION OF TAX.—There is hereby imposed a tax on—

(1) the receipt of hazardous waste at a qualified hazardous waste management unit,

(2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and

(3) the exportation of hazardous waste from the United States.

(b) AMOUNT OF TAX.—

(1) **In General.**—The amount of the tax imposed by subsection (a) with respect to each ton of hazardous waste shall be determined in accordance with the following table:

	If the taxable event is:	
	Land Disposal	Any Other Taxable Event
For calendar year:	The tax per ton is:	
1986	$27.00	$2.70
1987	30.00	3.00
1988	31.00	3.00
1989	36.00	3.00
1990	43.00	3.00.

(2) **Definitions relating to amount of tax.**—For definition of—

(A) hazardous waste, see section 4675(a)(1), and

(B) land disposal and any other taxable event, see section 4675(a)(5).

(c) **Liability for Tax.**—

(1) **Waste received at management units.**—The tax imposed by subsection (a)(1) shall be paid by the owner or operator of the qualified hazardous waste management unit.

(2) **Waste received for transport from the United States.**—The tax imposed by subsection (a)(2) shall be paid by the person holding the permit issued for transport for ocean disposal under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972.

(3) **Waste exported.**—The tax imposed by subsection (a)(3) shall be paid by the exporter.

(d) **Termination.**—The taxes imposed by this section shall not apply after September 30, 1990.

SEC. 4672. EXEMPTIONS; REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.

(a) **Exemption For Certain Removal and Remedial Actions, Etc.**—The tax imposed by section 4671 shall not apply to the receipt or export of hazardous waste pursuant to—

(1) a corrective action specified in—

(A) an initial or final order, or

(B) a proposed or final permit, issued by the Administrator under the Solid Waste Disposal Act or a State under a hazardous waste program authorized under section 3006 of such Act,

(2) a proposed or final closure plan approved by the Administrator or such a State,

(3) a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which has been selected or approved by the Administrator, or

(4) an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) EXEMPTION FOR WASTE RECEIVED AT ANY FEDERAL FACILITY.—The tax imposed by section 4671 shall not apply to any hazardous waste received at any facility owned by the United States.

(c) REDUCTION IN TAX WHERE PRIOR TAXABLE EVENT.—

(1) IN GENERAL.—If—

(A) tax under section 4671 or 4674 was paid with respect to any hazardous waste, and

(B) tax under section 4671 is subsequently imposed on such waste (hereinafter in this subsection referred to as the "later taxable event"),

then the tax under section 4671 on the later taxable event shall be reduced by the amount determined under paragraph (2).

(2) AMOUNT OF REDUCTION.—The amount of the reduction determined under this paragraph is the product of—

(A) the weight of hazardous waste involved in the later taxable event, multiplied by

(B) the lesser of—

(i) the highest rate of tax paid under section 4671 or 4674 with respect to any prior taxable event involving such waste (determined without regard to this subsection), or

(ii) the rate of tax imposed by section 4671 with respect to the later taxable event (as so determined).

SEC. 4673. SPECIAL RULES FOR WASTE WATER TREATMENT, INCINERATION. ETC.

(a) EXEMPTION FOR WASTE RECEIVED AT CERTAIN WASTE WATER TREATMENT UNITS.—Except as provided in subsection (e), the tax imposed by section 4671 shall not apply to hazardous waste received at any waste water treatment unit.

(b) INCINERATION, ETC. WITHIN 90 DAYS OF RECEIPT.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

(A) tax under section 4671 was paid with respect to the receipt of any hazardous waste at any qualified hazardous waste management unit or for transport described in section 4671(a)(2), and

(B) such waste is incinerated on land (or the equivalent of incineration on land) by any person within 90 days after the date of the first receipt referred to in subparagraph (A),

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

(2) EQUIVALENT OF INCINERATION.—For purposes of subparagraph (A), a method, technique, or process shall be treated as the equivalent of incineration on land if—

(A) such method, technique, or process meets detailed performance standards established by the Environmental Protection Agency, and

(B) such standards require a destruction and removal efficiency for the hazardous waste involved at least equivalent to the destruction and removal efficiency applicable to incineration on land.

(c) QUALIFIED CHEMICAL FUELS OR SOLVENTS.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if—

(A) tax under section 4671 was paid with respect to any hazardous waste,

(B) such waste is used by any person in the production of any qualified chemical fuel or solvent, and

(C) such fuel or solvent is by such person sold for use or used in any industrial or commercial use,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

(2) QUALIFIED CHEMICAL FUEL OR SOLVENT.—For purposes of subparagraph (A), the term "qualified chemical fuel or solvent" means any chemical or solvent which is determined by the Administrator as not being a hazardous waste.

(d) RECYCLING OF BATTERIES.—Under regulations prescribed by the Secretary, if—

(1) tax under section 4671 was paid with respect to the receipt of any battery at a qualified hazardous waste management unit, and

(2) the recycling of such battery begins at such a unit by any person within 90 days after the date of the first receipt of such battery at any qualified hazardous waste management unit,

then the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by section 4671.

(e) TAX TO APPLY WHILE CORRECTIVE ACTION NOT COMPLETED.—

(1) IN GENERAL.—The exemption provided by subsection (a) shall not apply (and no credit or refund shall be allowed under this section) with respect to any activity conducted at a facility (or part thereof) during the period that required corrective action remains uncompleted with respect to such facility (or part).

(2) REQUIRED CORRECTIVE ACTION.—For purposes of paragraph (1), required corrective action shall be treated as uncompleted during the period—

(A) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, and

(B) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

(3) RATE OF TAX WITH RESPECT TO WASTE WATER TREATMENT.—The rate of tax imposed by section 4671 by reason of this subsection with respect to hazardous waste received at any waste water treatment unit shall be 15 cents per ton.

SEC. 4674. BACKUP TAX ON GENERATOR.

(a) IMPOSITION OF TAX.—There is hereby imposed a tax on each ton of hazardous waste which, as of the close of the 270-day period beginning on the day after the day on which such waste was generated, has not been—

(1) received at a qualified hazardous waste management unit,

(2) received for transport from the United States for the purpose of ocean disposal, or

(3) exported from the United States.

(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the rate of tax applicable to land disposal under section 4671 at the end of the 270-day period described in subsection (a).

(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by the generator of the hazardous waste.

(d) EXEMPTIONS.—

(1) SMALL GENERATORS.—The tax imposed by subsection (a) shall not apply to hazardous waste generated during any month if the generator of such waste does not generate more than 100 kilograms of hazardous waste during such month.

(2) WASTE LEGALLY DISPOSED OF IN PUBLICLY OWNED TREATMENT WORKS.—The tax imposed by subsection (a) shall not apply to hazardous waste disposed of in any publicly owned treatment works if the disposal of such waste is not in violation of Federal, State, or local law.

(3) OTHER EXEMPTIONS TO APPLY.—The exemptions provided by subsections (a) and (b) of section 4672 shall apply to the tax imposed by subsection (a).

(4) EXEMPTIONS UNDER REGULATIONS; APPLICATION OF LOWER RATE.—The Secretary may prescribe regulations which provided exemptions from the tax imposed by subsection (a) (or the application of a lower rate) which are not inconsistent with the purposes of this section.

(e) COORDINATION WITH REDUCTION OF TAX WHERE PRIOR TAXABLE EVENT.—For purposes of subsection (c) of section 4672, any tax paid under this section shall be treated as paid under section 4671.

(f) GENERATOR.—For purposes of this section, the term "generator" means the person whose act or process produces the hazardous waste.

(g) TERMINATION.—No tax shall be imposed by this section on waste generated after September 30, 1990.

SEC. 4675. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subchapter—

(1) HAZARDOUS WASTE.—The term "hazardous waste" means any waste which is listed or identified as of the date of the enactment of the Superfund Revenue Act of 1985 under section 3001 of the Solid Waste Disposal Act. Rainwater shall

not be treated as hazardous waste unless mixed with hazardous waste (as defined in the preceding sentence).

(2) QUALIFIED HAZARDOUS WASTE MANAGEMENT UNIT.—The term "qualified hazardous waste management unit" means the specified area of land or structure—

(A) which isolates the hazardous wastes within a qualified hazardous waste facility, and

(B) which is subject to the requirements for obtaining interim status or a final permit under subtitle C of the Solid Waste Disposal Act.

(3) QUALIFIED HAZARDOUS WASTE MANAGEMENT FACILITY.—The term "qualified hazardous waste management facility" means any facility, as defined under subtitle C of the Solid Waste Disposal Act, which has received a permit or in accorded interim status under—

(A) section 3005 of the Solid Waste Disposal Act, or

(B) a State program authorized under section 3006 of such Act.

(4) OCEAN DISPOSAL.—The term "ocean disposal" means the incineration or dumping of hazardous waste over or into ocean waters or the waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, pursuant to section 102 of such Act.

(5) DEFINITIONS RELATING TO AMOUNT OF TAX.—

(A) LAND DISPOSAL.—The term "land disposal" means a taxable event described in section 4671(a)(1) with respect to a qualified hazardous waste management unit which is a landfill, surface impoundment, waste pile, or land treatment unit.

(B) LANDFILL, ETC.—For purposes of subparagraph (A), the terms "landfill", "surface impoundment", "waste pile" and "land treatment unit" have the respective meanings given such terms in regulations prescribed by the Administrator pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act.

(C) OTHER TAXABLE EVENT.—The term "any other taxable event" means—

(i) a taxable event described in section 4671(a)(1) which is not land disposal, and

(ii) a taxable event described in paragraph (2) or (3) of section 4671(a).

(6) WASTE WATER TREATMENT UNIT.—The term "waste water treatment unit" means any qualified hazardous waste management unit which is an integral and necessary part of a treatment system—

(A) for which a permit is required under section 402 of the Clean Water Act,

(B) which is subject to pretreatment standards under subsection (b) or (c) of section 307 of the Clean Water Act, or

(C) which is a zero discharge treatment system—

(i) which, if the system discharged into navigable waters, would comply with effluent limitation guidelines prescribed under paragraph (2) or (4) of section 304(b) of the Clean Water Act,

(ii) which, if the system discharged into a publicly owned treatment works, would comply with the pretreatment standards described in subparagraph (B), or

(iii) if no such guidelines or standards have been prescribed, which employs biological treatment.

The term "waste water treatment unit" shall not include any qualified hazardous waste management unit which receives for storage or final disposition concentrated treatment residues resulting from wastewater treatment.

(7) ADMINISTRATOR.—The "Administrator" means the Administrator of the Environmental Protection Agency.

(8) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).

(9) TON.—The term "ton" means 2,000 pounds.

(10) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by this subchapter shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) TREATMENT OF CONTAINERS, ETC. WHICH ARE RELATED TO INJECTION UNITS.—For purposes of this subchapter—

(1) any container, tank, or surface impoundment which, with respect to any hazardous waste, is used to treat or store such waste before underground injection of such waste (whether or not the waste when injected is hazardous waste) into an injection well, and

(2) the injection well into which such waste is injected,

shall be treated as a single hazardous waste management unit.

(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsection (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by this subchapter.

Subchapter D—Tax on Certain Imported Substances

Sec. 4677. Imposition of tax.
Sec. 4678. Definitions and special rules.

SEC. 4677. IMPOSITION OF TAX.

(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary

shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

(d) TERMINATION.—The taxes imposed by this section shall not apply after September 30, 1990.

SEC. 4678. DEFINITIONS AND SPECIAL RULES.

(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

(1) IN GENERAL.—The term "taxable substance" means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

(3) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) as necessary to carry out the purposes of this subchapter.

(b) OTHER DEFINITIONS.—For purposes of this subchapter—

(1) IMPORTER.—The term "importer" means the person entering the taxable substance for consumption, use, or warehousing.

(2) TAXABLE CHEMICALS; UNITED STATES.—The terms "taxable chemical" and "United States" have the respective meanings given such terms by section 4662(a).

(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4677.

Subchapter E—Superfund Excise Tax

Part I. Imposition of tax.
Part II. Taxable transaction.
Part III. Taxable amount; exempt transactions; credit against tax.
Part IV. Administration.
Part V. Definitions; special rules.

PART I—IMPOSITION OF TAX

Sec. 4681. Imposition of tax.
Sec. 4682. Termination.

SEC. 4681. IMPOSITION OF TAX.

(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

(b) **Amount of Tax.**—Except as otherwise provided in this subchapter, the amount of the tax shall be .08 percent of the taxable amount.

SEC. 4682. TERMINATION.

(a) **In General.**—No tax shall be imposed under section 4681 after December 31, 1990.

(b) **Termination If $10,000,000,000 of Superfund Taxes Collected.**—

(1) **Estimates by the secretary.**—The Secretary as of the close of each calendar quarter shall make an estimate of the aggregate amount appropirated or credited to the Hazardous Substance Superfund (other than by reason of paragraphs (3), (4), and (5) of section 9505 (b)) during the period beginning on November 1, 1985, and ending on September 30, 1990.

(2) **Termination if $10,000,000,000 credited before September 30, 1990.**—If the Secretary estimates under paragraph (1) that more than $10,000,000,000 of the amount referred to in paragraph (1) will be credited to the Fund as of the close of any calendar quarter before September 30, 1990, no tax shall be imposed under section 4681 after such quarter.

(c) **Procedures for Termination.**—

(1) **Proration over taxable period.**—In the case of any taxable period which begins and ends after the termination date determined under subsection (a) or (b), the tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) (and the credit allowable under section 4687) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined without regard to the termination) as—

(A) the number of days in such taxable period up to and including the date of termination, bears to

(B) the number of days in such taxable period.

(2) **Tax on imports.**—The tax imposed by section 4681 on taxable transactions described in paragraph (2) of section 4683(a) shall not apply to property imported after the termination date determined under subsection (a) or (b).

(3) **Other procedures.**—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

PART II TAXABLE TRANSACTION

Sec. 4683. Taxable transaction.
Sec. 4684. Taxable person.

SEC. 4683. TAXABLE TRANSACTION.

(a) **In General.**—For purposes of this subchapter except as otherwise provided in this subchapter, the term "taxable transaction" means—

(1) the sale or leasing of tangible personal property by a taxable person in connection with a trade or business, or

(2) the importing of tangible personal property into the United States by a taxable person.

(b) **Exempt Transactions.**—

For exempt transactions, see section 4686.

SEC. 4684. TAXABLE PERSON

(a) GENERAL RULE.—Except as otherwise provided in this subchapter, for purposes of this subchapter, the term "taxable person" means—

(1) in the case of a taxable transaction described in paragraph (1) of section 4683(a)—

(A) the manufacturer of the tangible personal property, or

(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

(2) in the case of a taxable transaction described in paragraph (2) of section 4683(a), the importer of the tangible personal property.

(b) GOVERNMENT ENTITIES AND EXEMPT ORGANIZATIONS NOT TAXABLE PERSONS.—For purposes of this subchapter, the term "taxable person" shall not include—

(1) the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of the foregoing, and

(2) any organization which is exempt from taxation under chapter 1 by reason of section 501(a); except that this paragraph shall not apply with respect to any transaction which is part of an unrelated trade or business (within the meaning of section 513) of such organization.

PART II—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX

Sec. 4685. Taxable amount.
Sec. 4686. Exempt transactions.
Sec. 4687. Credit against tax on sales and leases.

SEC. 4685. TAXABLE AMOUNT

(a) SALE.—For purposes of this subchapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

(1) including items payable to the seller with respect to such transaction, but

(2) excluding the tax imposed by section 4681 or chapter 32 with respect to such transaction.

(b) IMPORTS.—For purposes of this subchapter, the taxable amount in the case of any import shall be the sum of—

(1) the customs value, plus

(2) customs duties and any other duties which may be imposed.

If there is no such customs value, fair market value (determined in a manner similar to the determination of customs value) shall be substituted for customs value in paragraph (1).

(c) LEASES.—For purposes of this subchapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

(d) CONTAINERS, PACKING, AND TRANSPORTATION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing, and transportation charges, etc., and constructive sales price) shall apply in computing the taxable amount.

(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

(1) SALES.—In the case of a sale of any tangible personal property where the consideration is received by the seller in more than 1 taxable period—

(A) in the case of the seller, the taxable amount for each such taxable period shall be the portion of the taxable amount received during such period, and

(B) in the case of the buyer, the cost of such property shall be taken into account for purposes of determining qualified inventory costs only when paid.

(2) LEASES.—In the case of a lease with a term which includes more than 1 taxable period, the taxable amount for each taxable period shall include the gross lease payments received by the taxable person during such taxable period.

SEC. 4686. EXEMPT TRANSACTIONS.

(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4681 on any tangible personal property imported into the United States as part of a shipment (within the meaning of section 498(a)(1) of the Tariff Act of 1930; 19 U.S.C. 1498(a)(1)) the aggregate taxable amount of which is $10,000 or less.

(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4681 on the sale of any property which is to be exported from the United States.

(c) CERTAIN EXEMPT PRODUCTS.—

(1) IN GENERAL.—In the case of any exempt product—

(A) no tax shall be imposed by section 4681 with respect to such product, and

(B) any qualified inventory costs allocable to such product shall not be taken into account under section 4687.

(2) EXEMPT PRODUCT.—For purposes of this section—

(A) IN GENERAL.—The term "exempt product" means—

(i) any food product,

(ii) any unprocessed agricultural or fishery product,

(iii) any unprocessed timber, and

(iv) any fertilizer product.

(B) FOOD PRODUCT.—The term "food product" means—

(i) any food or nonalcoholic drink for humans or animals, and

(ii) any material, component, or packaging of such a food or drink.

(C) FERTILIZER PRODUCT.—The term "fertilizer product" means—

(i) any product to be used as a fertilizer, and

(ii) any material, component, or packaging of such a product.

SEC. 4687. CREDIT AGAINST TAX ON SALES AND LEASES.

(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 4681 for any taxable period on taxable transactions described in paragraph (1) of section 4683(a) an amount equal to the greater of—

(1) .08 percent of the qualified inventory costs of the taxable person for the taxable period, or

(2) $8,000.

(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) for such period.

(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a)(1) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a)(1) for such succeeding taxable period.

(c) QUALIFIED INVENTORY COSTS.—For purposes of this subchapter—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "qualified inventory costs" means, with respect to any taxable period, the costs of tangible personal property which—

(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

(B) are paid or incurred by the taxable person during such taxable period.

(2) SPECIAL RULES.—For purposes of this subsection—

(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION. If any portion of an allowance for depreciation or amortization with respect to any property would be allocable to the inventory of a manufacturer under the full absorption method of accounting, a like portion of the cost of such property shall be included in the qualified inventory costs of the taxpayer for the taxable period in which such property is placed in service. Treatment under the preceding sentence shall be in lieu of any allowance for depreciation or amortization.

(B) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

(d) CARRYFORWARD NOT ALLOWED FOR COSTS DURING PERIODS FOR WHICH RETURN NOT FILED.—

(1) **In general.**—In determining the amount allowable as a carryforward under subsection (b)(2), the qualified inventory costs of the taxable person during any taxable period shall be taken into account only if such person files a timely return (determined with regard to extensions) of the tax imposed by section 4681 for such period.

(2) **Basis adjustment for income tax purposes.**—For purposes of subtitle A, if the cost of any property is taken into account in determining the amount of the qualified inventory costs of the taxable person for any taxable period, the adjusted basis of such property shall be reduced by an amount equal to .08 percent of the qualified inventory costs of the taxpayer attributable to such property.

PART IV—ADMINISTRATION

Sec. 4688. Liability for tax.
Sec. 4689. Return requirement; taxable period; depositary requirements.
Sec. 4690. Regulations.

SEC. 4688. LIABILITY FOR TAX.

The taxable person shall be liable for the tax imposed by section 4681.

SEC. 4689. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITARY REQUIREMENTS.

(a) **Return Requirement.**—

(1) **In General.**—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4681 for any taxable period not later than—

(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

(B) if no return of tax is required under chapter 1—

(i) April 15 in the case of a taxpayer other than a corporation, and

(ii) March 15 in the case of a corporation,

including extensions granted for purposes of this subchapter.

(2) **Exception for taxable transactions of $10,000,000 or less.**—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4683(a) if the aggregate taxable amount for such transactions is $10,000,000 or less. For purposes of the preceding sentence, there shall not be taken into account any transaction exempt from the tax imposed by section 4681 by reason of section 4686(c).

(3) **Other exceptions.**—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

(b) **Taxable Period.**—For purposes of this subchapter, the term "taxable period" means—

(1) the taxable person's taxable year for purposes of chapter 1, or

(2) if there is no taxable year for purposes of chapter 1, the calendar year.

(c) **Depository Requirements.**—

(1) IN GENERAL.—In the case of any person with respect to whom tax is imposed under section 4681 for any taxable period on any taxable transaction described in paragraph (1) of section 4683(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the 1st taxable period of any taxable person to which this subchapter applies if the gross receipts of such person during the 1st taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

SEC. 4690. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.

PART V—DEFINITIONS; SPECIAL RULES

Sec. 4691. Definitions; special rules.

SEC. 4691. DEFINITIONS; SPECIAL RULES.

(a) MANUFACTURER. For purposes of this subchapter—

(1) IN GENERAL.—The term "manufacturer" includes any producer of tangible personal property (including raw materials).

(2) CERTAIN ACTIVITIES NOT TAKEN INTO ACCOUNT.—A person shall not be treated as a manufacturer with respect to any property merely by reason of—

transportation of such property, or

(B) INCIDENTAL PREPARATION OF PROPERTY BY A RETAILER OR WHOLESALER (INCLUDING ROUTINE ASSEMBLAGE).

(b) SPECIAL RULE FOR TAXPAYERS UNDER COMMON CONTROL.—

(1) IN GENERAL.—All persons which are—

(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of the $8,000 amount specified in section 4687(a)(2), the $10,000,000 amount specified in section 4689(a)(2), and the $50,000,000 amount specified in section 4689(c)(2).

(2) ALLOCATION OF AMOUNTS.—The amounts specified in paragraph (1) shall be allocated among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

(c) PERSON.—For purposes of this subchapter, the term "person" includes any governmental entity.

(d) UNITED STATES.—For purposes of this subchapter, the term "United States" has the meaning given such term by section 4612(a)(4).

(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this subchapter, the term "tangible personal property" includes gases.

(f) IMPORT.—Except as otherwise provided in regulations, for purposes of this subchapter, the term "import" means the entering, or withdrawal from warehouse, for consumption.

(g) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4681 on the importing of any tangible personal property shall be in addition to any duty imposed on such importation.

(h) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4681.

(i) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 12 months, there shall be substituted for the dollar amounts otherwise applicable under sections 4687(a)(2) and 4689(a)(2) (determined after the application of subsection (b)) an amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

(j) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this subchapter, except as provided in regulations, the term "sale" includes any exchange or other transfer, other than a gift (within the meaning of section 102 or section 170).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart A—Information Concerning Persons Subject to Special Provisions

Sec. 6031. Return of partnership income.

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Sec. 6039E. Information with respect to management tax on hazardous waste.

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SEC. 6039E. INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

Each person on whom a tax is imposed under subchapter C of chapter 38 shall (at such time and in such manner as the Secretary may require) submit to the Secretary such information as the Secretary may require, including information which such person is required to provide the Administrator of the Environmental

Protection Agency under the Solid Waste Disposal Act. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall also apply to persons not described therein with respect to information which the Secretary determines is necessary or appropriate to the administration of such subchapter.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6420. GASOLINE USED ON FARMS.

(a) Gasoline.— * * *

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(h) Termination.—~~This~~ **Except with respect to taxes imposed by section 4081(b), this** section shall apply only with respect to gasoline purchased before October 1, 1988.

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SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.

(a) Nonhighway Uses.— * * *

* * * * * * *

(h) Effective Date.—~~This~~ **Except with respect to taxes imposed by section 4081(b), this** section shall apply only with respect to gasoline purchased before October 1, 1988.

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SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) Nontaxable Uses.—* * *

* * * * * * *

(f) Gasoline Used to Produce Certain Alcohol Fuels.—

(1) In general.—Except as provided in subsection (j), if any gasoline on which a tax is imposed by section ~~4081~~ **4081(a)** at the rate of 9 cents a gallon is used by any person in producing a mixture described in section 4081(c) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the amount determined at the rate of 5⅔ cents a gallon. The preceding sentence shall not apply with respect to any mixture sold or used after December 31, 1992.

(2) Coordination with other repayment provisions.—No amount shall be payable under paragraph (1) with respect to any gasoline with respect to which an amount is payable under

subsection (d) or (e) of this section or under section 6420 or 6421.

* * * * * * *

(m) Termination of Subsections (a), (b), (c), (d), and (g).—~~Subsection~~ **Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections** (a), (b), (c), (d), and (g) shall only apply with respect to fuels purchased before October 1, 1988.

(n) Payments For Taxes Imposed by Section 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

~~(n)~~ **(o)** Cross References.—

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) Addition to the Tax.—In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), **section 4022 (relating to Superfund excise tax)**, subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

* * * * * * *

SEC. 6656. FAILURE TO MAKE DEPOSIT OF TAXES OR OVERSTATEMENT OF DEPOSITS.

(a) Underpayment of Deposits.—In case of failure by any person required by this title or by regulation of the Secretary under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 5 percent of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

* * * * * * *

(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4001, the tax required to be deposited shall be equal to the lesser of—

(1) 90 percent of the tax imposed by section 4001 during the taxable period on taxable transactions described in paragraph (1) of section 4003(a), or

(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if not tax was imposed during the preceding taxable period.

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Subchapter B—Assessable Penalties

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Sec. ~~6708~~. **6709.** Penalties with respect to mortgage credit certificates.
Sec. 6710. Failure to provide information with respect to management tax on hazardous waste.

* * * * * * *

SEC. 6708. 6709. PENALTIES WITH RESPECT TO MORTGAGE CREDIT CERTIFICATES.

(a) NEGLIGENCE.—If—

(1) any person makes a material misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate, and

(2) such misstatement is due to the negligence of such person,

such person shall pay a penalty of $1,000 for each mortgage credit certificate with respect to which such a misstatement was made.

(b) FRAUD.—If a misstatement described in subsection (a)(1) is due to fraud on the part of the person making such misstatement, in addition to any criminal penalty, such person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which such a misstatement is made.

(c) REPORTS.—Any person required by section 25(g) to file a report with the Secretary who fails to file the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of $200 for such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect. In the case of any report required under the second sentence of section 25(g), the aggregate amount of the penalty imposed by the preceding sentence shall not exceed $2,000.

(d) Mortgage Credit Certificate.—The term "mortgage credit certificate" has the meaning given to such term by section 25(c).

SEC. 6710. FAILURE TO PROVIDE INFORMATION WITH RESPECT TO MANAGEMENT TAX ON HAZARDOUS WASTE.

(a) In General.—Any person who fails to meet any requirement imposed by section 6039E shall pay a penalty of $100 for each day during which such failure continues, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection with respect to any failure shall not exceed $50,000.

(b) Penalty in Addition to Other Penalties.—The penalty imposed by this section shall be in addition to any other penalty provided by law.

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CHAPTER 80—GENERAL RULES

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SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) General Rule.—An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such governments (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) Subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 30 (relating to Superfund excise tax),

~~(A)~~ **(B)** chapter 31 (relating to tax on special fuels).

~~(B)~~ **(C)** chapter 32 (relating to manufacturers excise taxes),

~~(C)~~ **(D)** subchapter B of chapter 33 (relating to communications excise tax), or

~~(D)~~ **(E)** subchapter D of chapter 36 (relating to tax on use of certain highway vehicles),

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Subtitle I—Trust Fund Code

* * * * * * *

CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishing of Trust Funds

Sec. 9501. Black Lung Disability Trust Fund.

* * * * * * *

Sec. 9505. Hazardous Substance Superfund.
Sec. 9506. Leaking Underground Storage Tank Trust Fund.
Sec. 9507. Oil Spill Liability Trust Fund.

* * * * * * *

SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.

(a) Creation of Trust Fund.— * * *

(b) Transfer to Airport and Airway Trust Fund of Amounts Equivalent to Certain Taxes.—There is hereby appropriated to the Airport and Airway Trust Fund—

(1) amounts equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1988, under subsections (c) and ~~(d)~~**(e)** of section 4041 (taxes on aviation fuel) and under sections 4261 and 4271 (taxes on transportation by air);

(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, January 1, 1988, under section ~~4081,~~ **4081 (a),** with respect to gasoline used in aircraft; and

(3) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, Janaury 1, 1988 under section 4071 with respect to tires of the types used on aircraft.

* * * * * * *

SEC. 9503. HIGHWAY TRUST FUND.

(a) Creation of Trust Fund—* * *

(b) Transfer to Highway Trust Fund of Amounts Equivalent to Certain Taxes.—

(1) In general.—* * *

* * * * * * *

(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account.

(c) Expenditures From Highway Trust Fund.—* * *

(1) Federal aid highway program.—

* * * * * * *

(4) Transfers from the trust fund for motorboat fuel taxes.—

(A) Transfer to boat safety account.—

(i) In general.—The Secretary shall pay from time to time from the Highway Trust Fund into the Boat Safety Account in the Aquatic Resources Trust Fund

amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1988.

(ii) LIMITATIONS—

(I) LIMIT ON TRANSFERS DURING ANY FISCAL YEAR.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $45,000,000.

(II) LIMIT ON AMOUNT IN FUND.—No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the Boat Safety Account to a sum in excess of $45,000,000.

(B) $1,000,000 PER YEAR OF EXCESS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—

(i) IN GENERAL.—Any amount received in the Highway Trust Fund—

(I) which is attributable to motorboat fuel taxes, and

(II) which is not transferred from Highway Trust Fund under subparagraph (A),

shall be transferred (subject to the limitation of clause (ii)) by the Secretary from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

(ii) LIMITATION.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

(C) EXCESS FUNDS TRANSFERRED TO SPORT FISH RESTORATION ACCOUNT.—Any amount received in the Highway Trust Fund—

(i) which is attributable to motorboat fuel taxes, and

(ii) which is not transferred from the Highway Trust Fund under subparagraph (A) or (B),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund.

(D) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term "motorboat fuel taxes" means the taxes under section 4041(a) with respect to special motor fuels used as fuel in motorboats and under section ~~4081~~ **4081(a)** with respect to gasoline used as fuel in motorboats.

* * * * * * *

SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Superfund" (hereinafter in this section referred to as the "Superfund"), consisting of such amounts as may be—

(1) appropriated to the Superfund as provided in this section,

(2) appropriated to the Superfund pursuant to section 418(b) of the Superfund Revenue Act of 1985, or

(3) credited to the Superfund as provided in section 9602(b).

(b) Transfers to Superfund.—There are hereby appropriated to the Superfund amounts equivalent to—

(1) the taxes received in the Treasury under section 4611, 4661, 4671, 4674, or 4681 (relating to environmental taxes),

(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as "CERCLA"),

(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

(4) penalties assessed under title I of CERCLA, and

(5) punitive damages under section 107(c)(3) of CERCLA.

[Effective January 1, 1986, the following is added to the end of subsection (b):]

In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).

(c) Expenditures From Superfund.—

(1) In general.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985, or

(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

(2) Exception for certain transfers, etc. of hazardous substances.—Amounts in the Superfund shall not be available for any transfer or disposal which could not be made but for section 121(i) of CERCLA as in effect on the date of the enactment of the Superfund Amendments of 1985.

(d) Authority to Borrow.—

(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

(2) Repayment of advances.—

(A) In general.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

(B) Final repayment.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Leaking Underground Storage Tank Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline), and

(2) amounts collected under section 9003(h)(3) of the Solid Waste Disposal Act.

(c) EXPENDITURES.—

(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments of 1985.

(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

(i) amounts paid under—

(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

(III) section 6427 (relating to fuels not used for taxable purposes), and

(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081(b).

(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Oil Spill Liability Trust Fund", consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

9602(b).

(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

(2) amounts recovered, collected, or received under title I of the Comprehensive Oil Pollution Liability and Compensation Act,

(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fud established by section 18(f) of the Deep Water Port Act of 1974, and

(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund es-

tablished under section 302 of the Outer Continental Shelf Lands Act Amendments on 1978.

(c) EXPENDITURES.—

(1) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

(A) the payment of removal costs described in section 101(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act, as in effect on the date of the enactment of this section,

(B) the payment of contributions to the International Fund under section 404 of such Act,

(C) the payment of removal costs for which the Deep Water Port Liability Fund is liable under the Deep Water Port Act of 197[illegible]

(D) the payment of removal costs for which the Offshore Oil Pollution Compensation Fund is liable under title III of the Outer Continental Shelf Lands Act Amendments of 1978, and

(E) the payment of all expenses of administration inclurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act.

Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (B) with respect to any contribution to the International Fund only in proportion to the portion of the International Fund used for the payment of response costs.

(2) LIMITATIONS ON EXPENDITURES.—

(A) 200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

(d) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust fund may be paid only out of such Trust Fund.

(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined.

* * * * * * *

VI. ADDITIONAL VIEWS ON SUPERFUND OF HON. JAMES R. JONES AND HON. J.J. PICKLE

The first 5-year authorization of the Superfund Program is about to expire. We now have a 5-year compendium on what's gone wrong, and what little has been done right. The record is quite clear. After 5 years of effort, the number of sites on the national priority list has grown, not diminished. More people are drinking dirty water, not cleaner. Our citizens are still exposed to harmful contaminants, and waste is still being emitted into our environment.

Soon the House will be considering legislation that provides additional funding over the next five years to cleanup the Nation's worst, neglected toxic waste sites. No one seems to question the need for or general purpose of Superfund reauthorization. We all know we need to pay more. But we don't know who should pay and at what rates. In our opinion, the bill reported by the Committee on Ways and Means strikes the appropriate balance among many competing goals.

BROADER, MORE RELIABLE SUPERFUND TAX BASE

The question of who should be paying for the Superfund cleanup has troubled us for some time. Recently a list of responsible parties that have been associated with known waste sites was published. It was most enlighting. The list reads like a Who's Who of the Fortune 500 and 1000. There were many oil and chemical companies identified on the list, but there were an astonishing number of companies that have never been associated in the media with hazardous waste problems. Today, there is virtually no correlation between those who pay the current feedstock and petroleum taxes and those who contributed to the problem. Not only is the theory behind the current taxes flawed but its application is even worse. According to EPA, of the 30 most frequently found substances at 881 hazardous waste sites, only 11 are subject to tax. Moreover, petroleum refiners generate less than 5 percent of the Nation's wastes, yet they currently provide about 16 percent of the Super fund revenues.

As a result, many of those who are responsible for and who benefited from past mismanagement of hazardous wastes are escaping responsibility altogether. Hazardous waste mismanagement is a societal problem. Hazardous waste management is a benefit to all of our society.

That is the reason when the Committee on Energy and Commerce reported H.R. 2817, it recommended that our Committee adopt a broad-base corporate tax designed to raise $4.5 billion over the 5-year funding period. The Committee on Public Works and Transportation also recommended adoption of a broad-base corporate tax. This is precisely what the Ways and Means Committee legislation accomplishes. The Superfund Excise Tax (SET) would raise $4.5 billion through the imposition of an excise tax on manufacturers with annual gross sales over $10 million.

The SET would apply to sales or leases of tangible personal property by the person who manufactured or produced the property at the very low rate of 0.08 percent of the sales price or customs value. That is, $8 of tax per $10,000 of taxable amount. The tax would apply to imports of personal property, and property destined for export would not be subject to tax. The SET exempts small manufacturers, nor would it apply to retailers, wholesalers, or distributors. It is simply an excise tax imposed at the manufacturing level of production. Some have expressed concern this tax is like the value-added taxes that are imposed in Europe. This is emphatically wrong. It is an excise tax, and nothing more.

TRADE-NEUTRAL APPROACH

Superfund is to be reauthorized at a greatly expanded funding level, somewhere between $7.5 billion (as recommended by the Senate) and $10 billion, as proposed by the House. Only the general manufacturers' SET proposed by the Committee on Ways and Means can finance an increase of such a magnitude in Superfund without adding to the current international trade imbalance. All of the other taxes considered by our Committee—including increases in the existing feedstock and petroleum taxes, waste-end taxes, surcharges and net receipts taxes—would mean higher costs for U.S. companies, but not for their foreign competitors. That approach is certain to raise imports, lower exports and worsen the trade deficit. Adoption of the Committee recommendation gives our House colleagues an opportunity to end speech-making on the trade issue, and to act toward this end.

The SET adopted by our Committee would not harm the ability of U.S. companies to compete with foreign companies either at home or abroad, because the tax is imposed on imports and rebated on exports. It is trade-neutral as to its application. This is a goal a majority of our House colleagues clearly support and was a major factor in the decision to adopt the SET in the Committee on Ways and Means.

INCREASE IN THE PETROLEUM TAX IS A GRAVE MISTAKE

Although we supported the recommendations of the Committee on Ways and Means, we did so reluctantly. The decision to increase the current petroleum tax of .79-cent per barrel to 3.85-cents per barrel on crude oil received at a U.S. refinery is most unfortunate. Such action to increase the petroleum tax will greatly impact our refining industry. It would be a trade policy disaster. Our Nation's refiners face a grave outlook. In 1981, when the Superfund petroleum tax was first imposed, there were 324 refineries in the United States. As of 1985, 223 refineries were still in existence. This is a drop of 101 refineries. Over 35-percent of our refining capacity has shut down. Some have estimated that we have lost over 11,000 refining jobs since 1981. Refineries that remain are at 25 percent below capacity.

The outlook for increased foreign competition is ominous. In 1985, a flood of refining capacity will be brought on board in the Middle East, including three Saudi Arabian refineries capable of handling 800,000 bbl per day. We may be witnessing a 100-percent increase or more in Persian Gulf petroleum products exports.

What does all this foreign competition mean? In six of the last eight quarters beginning in 1983, a barrel of refined products has sold in the U.S. market for less than the price of a barrel of crude oil used to make it. There is no hope for anything but negative profit margins for our refiners in the near and long-term.

Foreign competition has other price advantages. A major reason domestically refined products cannot fairly compete with imported products is the substantial environmental costs domestic products must bear—estimated to be over 2.5 cents per gallon of gasoline produced every year since 1980. Additionally, foreign refiners, who have less restrictive domestic lead usage limits, segregate high octane components to make low lead gasoline for the U.S. import market—giving them an almost 5 cents per gallon incremental production cost advantage over our domestic refiners. *That means a total 7.5-cent per gallon cost advantage over our domestic refiners.*

CAUTION ON ADOPTION OF A WASTE-END TAX AS A MAJOR SOURCE OF FUNDING

The Committee on Ways and Means recommended as part of its Superfund revenue package a waste management tax. The tax would be expected to raise $1.5 billion over the funding period. Let us emphasize, it is EXPECTED to raise that amount. We have no experience with the implementation of a waste-end tax at the federal level. A study by the General Accounting Office of three states that have a waste management tax found that each state experienced significant revenue shortfalls. One state, in fact, replaced its waste management tax in 1983 after discovering that administrative costs exceeded revenues. The GAO study found revenue shortfalls that ranged from 39 to 93-percent. There is a serious issue as to what revenue shortfall will be experienced at the federal level.

Others have questioned the fact that a waste management tax will encourage midnight dumping, waste blending, questionable recycling and treatment operations, and under-reporting of waste volumes. Many environmental experts, in fact, fear that the imposition of a waste management tax will completely undermine the 1984 RCRA policing structure.

Last, we feel compelled to point out the concern expressed to our Committee that a waste management tax should not be enacted until the 1984 RCRA amendments are implemented fully, a point which is at least 4-years away. The reliance of a waste management tax on the RCRA structure is quite disconcerting when one realizes that the 1984 RCRA amendments will not be fully in place for another 4-years.

We urge the conferees to give serious consideration to the problems we have addressed on the waste management tax.

SET BEST APPROACH

The most important aspect of the recommendation of the Committee on Ways and Means is the fact that it bears a fair relationship to the purpose and benefits of Superfund. It is a more equitable, rational approach. Broadening Superfund's tax base is both necessary and appropriate. That is the reason the Committees on Energy and Commerce, Public Works, and Ways and Means all recommended adoption of a broad-base corporate tax. In view of the diverse sources of hazardous wastes and the general societal benefits all of us receive from their clean-up, SET is the best feasible solution to our funding needs.

James R. Jones.
J.J. Pickle.

VII. ADDITIONAL VIEWS OF HON. BILL FRENZEL

Everybody believes that the Superfund extension bill ought to be passed this year. So do I.

The Ways and Means Committee jurisdiction only includes the financing plan necessary to fund the program designed by the other committees. Ways and Means had to find about $10 billion over 5 years to finance the bills sent us by the committees of primary jurisdiction.

Every combination of taxes considered by the Committee had strong opponents armed with strong arguments. There is no painless way to finance Superfund.

The current Superfund tax, a combination of an oil tax and a feedstock tax, was created on the rationale that the taxpayers, mostly oil and petro-chemical companies, had some relationship to the materials which have caused the problem. It was not a bad way to finance the first phase of Superfund cleanup.

The second phase, represented by this bill, requires more money. The higher levels of expense caused the Committee to go beyond tax payers who could be directly linked to the problem. Thus, every proposal went beyond the old oil and feedstock taxes, and the proposed, but still linked, waste-end tax. The principal suspects included a Value Added Tax (VAT), called in this case a broad-based manufacturing excise tax, general revenue financing, other "broad-based taxes," surcharges, and borrowing.

By the narrowest of margins, 18–17, the Committee chose the VAT, or broad-based excise tax, to carry about 45% of the 5 year, $10 billion tax load.

It rejected a substitute by Congressman Gregg which I believe was the most thoughtful and creative alternative, and it rejected other proposals with higher oil, feedstock and waste-end taxes and higher borrowing and/or general revenue. In all cases the divisions were close.

My first choice is the Gregg plan. My second would be a plan which is strong on the linked taxes and on borrowing. Obviously, borrowing and/or general revenue are important to those who believe, like EPA, that the Superfund cannot or will not spend the full $10 billion. With the Senate positioned at $7.5 billion, and a dissatisfied White House, it seems likely to me that the final tax burden will be considerably less than $10 billion. I see no need to punish linked industries unnecessarily because Superfund is aimed at orphan dump sites. Current law can handle present dumpers. Superfund covers sites where responsibility, other than the broad health and safety responsibilities of the government, cannot be determined.

However, of all the tax alternatives, I find the VAT base recommended by the Committee the worst.

It may not provide enough revenue. It may cost more than proponents say to operate the system. It repudiates the old linkage theory, but its base is not broad enough to cover all taxpayers. If the Superfund is in the public interest, and I believe it is, it probably ought to be supported by the broadest based tax of all, an individual surtax.

For me, the greatest drawback of the VAT is that it squanders the most likely consumption tax, one that might be used in the future as a partial tradeoff for the corporate income tax, which could help to make America competitive again in international markets. Once used for Superfund, it is lost, perhaps forever.

The VAT in the Committee bill is very similar to the tax in the Senate bill. That means there is no maneuvering room in Conference. Make no mistake. If we approve the Committee's recommendation, we will have a VAT.

I believe neither Congress nor the American people want a VAT now. Neither Congress nor the American people fully understand it yet. The public debate and discussion required in this country for major tax policy changes has hardly begun.

Because I feel so strongly that a VAT is premature, I have agreed to co-sponsor, with Congressman Downey of New York, an alternative financing proposal. It's not my first, nor second, choice, but I do favor it miles ahead of the Committee's Value Added Tax.

I respectfully suggest that a rule be granted for the Downey tax proposal, and that it be adopted as the House's financing plan for the needed next phase of Superfund.

BILL FRENZEL.

VIII. ADDITIONAL VIEWS OF HON. JUDD GREGG

The Committee on Ways and Means acted responsibly by providing financing for the Superfund at a level slightly in excess of $10 billion, ~~but~~ I believe that the inclusion of the Superfund Excise Tax (SET) is a serious error. This action undermines the key principles of sound tax policy and adherence to the traditional "polluter pays" concept.

My opposition to the SET is based specifically on its inability to distinguish between polluters and non-polluters, and its structure as a modified value-added tax (VAT). A VAT is inherently regressive, difficult to administer and enforce, and fundamentally inappropriate for a limited and specifically targeted program, such as Superfund. Because it would be a hidden tax with the capability to raise tremendous quantities of revenue, it could be subject to easy increases and abuses.

Although the SET appears to offer the advantage of trade neutrality, I believe there are better broad-based funding mechanisms which could satisfy this criterion, while also providing the requisite environmental nexus. I urge the House to pursue those alternatives and reject the SET.

The simplest and most direct approach would be to provide this portion of the money from general revenues. The difficulty with this, of course, is that an appropriation of this magnitude would add significantly to the budget deficit. General revenue funding is also considered to be unreliable because there may be an inclination to appropriate less than the full authorized amounts when the money is not being drawn from a dedicated trust fund. Financing from general revenues should, therefore, be held to a level no greater than that which reflects the contribution to waste sites by public and general welfare entities.

The waste sites that are eligible for Superfund action are those for which no responsible party can be identified. These problems have not, in many cases, been caused by contemporary users of chemical feedstocks or disposers of hazardous waste; and there is good evidence that a significant portion of the waste is derived from a broad spectrum of industry. Thus, although I am opposed to the SET, I am supportive of the general concept of including broad-based funding as the only equitable alternative to compensate for the broader societal involvement in superfund sites; but the tax should be structured to reflect the fact that all segments of society are not equally culpable.

I also believe that the use of waste-end tax as a major revenue source is unwise; but a properly designed waste-end tax can be a very valuable short-term instrument for the promotion of desirable waste management practices. It also serves to broaden the tax base, with a concurrent improvement in the environmental nexus of the total tax package.

However, if the waste disposal tax is successful in encouraging waste treatment and recycling, the tax base will undergo significant erosion over time, and a more stable, waste-connected tax will be needed. This can be accomplished in a straightforward manner, for the longer term, by imposing a broadly based tax, with rates set on the basis of historical waste generation, on an industry-by-industry basis.

JUDD GREGG.

IX. DISSENTING VIEWS OF HON. THOMAS J. DOWNEY, HON. DAN ROSTENKOWSKI, HON. ROBERT T. MATSUI, HON. BRIAN J. DONNELLY, HON. CHARLES B. RANGEL, AND HON. DONALD J. PEASE

In our narrow approval of the Superfund Manufacturers Excise Tax, the Ways and Means Committee has actually pushed the Congress dangerously close to the edge of a hidden trap for American taxpayers—the Value Added Tax. Not only does this tax undermine the principles of this country's tax policy, it also violates the rationale of the Superfund hazardous waste program by transferring the costs of the program to taxpayers who have played little or no role in the creation of the toxic waste crisis facing us today.

The country has made a decision to raise the revenue needed to promote the general welfare through a progressive tax system. Different tax rates reflect an individual's ability to pay taxes because this is the fairest and most equitable means of raising the money we need to run our country.

The supporters of this new Superfund tax have called it a Manufacturers Excise Tax. However, this regressive tax should be examined for what it really is—a value added tax. The tax approved by our Committee is imposed on manufactured goods. Each manufacturer is taxed on an amount of value added to goods they produce. An excise tax is normally a tax on the full sales price of the goods produced and is traditionally viewed as a tax on narrow categories. The distinction is important because if Americans are going to be railroaded into paying a regressive tax, they ought to know they're not riding a phantom train surreptitiously dubbed an "excise tax."

The Superfund VAT contained in H.R. 2817 will be levied on the sale of manufactured goods at each stage of the production process. The cost of the tax will be transferred to the buyer of those goods. If the buyer happens to be a manufacturer, a credit will be provided against the amount of tax that has previously been paid by other manufacturers. For example, in the manufacture of an automobile, a credit would be given to the auto manufacturer for the taxes that were paid on the parts of the car—the tires, the glass for the windows or the steel and aluminum—that the auto manufacturer bought from another manufacturer. Each tax is therefore factored into the selling price of a product. But the cost of the tax is hidden in its final sales price which is paid by the consumer.

An invisible tax reflected in higher prices for consumers ignores the principles of tax fairness and equity. Unlike the tax code, consumer prices do not reflect a taxpayer's economic situation and their ability to pay a certain tax rate. Obviously, lower- and middle-income people will have a tougher time swallowing higher prices than the wealthy. A VAT is a regressive tax and is patently unfair to the average American.

Proponents of this new Superfund tax claim that the tax is dedicated only to Superfund and that enough safeguards exist in the legislative and political processes to ensure that this tax is not expanded to raise general revenue. However, the history of Federal taxes clearly shows that once a tax is enacted, it inevitably expands. The Investment Tax Credit is one example of a tax allowance with a narrowly defined goal that has grown to a proportion that was never intended when it was designed.

Serious practical concerns have been voiced over the Superfund VAT. The Treasury Department and the Environmental Protection Agency have written about the VAT contained in S. 51, which closely resembles the VAT contained in H.R. 2817, and noted that it:

> is an entirely new method of taxation that would present numerous administrative difficulties for both the Internal Revenue Service and taxpayers. For example, the manufacturer's VAT would create valuation problems for tax administrators and taxpayers. This is because manufacturers do not sell exclusively to wholesalers. Some manufacturers engage in wholesale and retail activities, perhaps even selling directly to consumers. In such a case, adjustments must be made to reduce the manufacturers price to reflect the fact that it is engaged in wholesale and/or retail activity. This involves the need to determine an "arms-length price" for intercompany pricing purposes. Canada, which has a manufacturers VAT, has found it necessary to rely on an extensive set of rules and regulations involving discounts, notional values, and phantom sales to "paper" branches to solve this problem. The Internal Revenue Service has estimated that the cost of implementing the manufacturers VAT would be approximately $5.1 million per year.

If the VAT were adopted into law, the EPA would be corralled in the starting blocks as the Teasury Department struggled to deal with a new and complicated Superfund tax at a time when the Agency should be accelerating its efforts to cleanup hazardous waste dumps. Who bears the cost of this delay? The people living near toxic waste sites. They will have to endure contaminated groundwater, noxious fumes, and general anxiety about their prolonged exposure to dangerous chemicals for that much longer. And under the VAT, it is important to remember that these same people affected by the toxic waste problem will be paying for the cleanup effort through higher prices. It's bad enough that they must live near toxic waste—they should not be forced to pay for that risk.

Congress designed the Superfund Trust Fund in 1980 to clean up thousands of abandoned and out-of-control hazardous waste dumps through revenue raised from the sale of crude oil and 42 chemical feedstocks. In theory, EPA is supposed to use the CERCLA trust fund to clean up sites and then recover the costs of the cleanup from those parties responsible for the problem. At the time the law was written, we believed that these chemicals and the companies producing the feedstocks were most directly responsible for the toxic waste problem.

Today, the feedstock tax has been widely viewed as meeting the test of tax equity because of the relationship between the companies on which the tax burden falls and the predominance of the kinds of waste found at hazardous waste sites. EPA reports that 93 percent of all hazardous waste generated in the United States is generated by the chemical, petroleum and metal-related industries, which are the companies that pay the feedstock taxes. In its final report dated December 1984 on *Feasibility and Desirability of Alternative Tax Systems for Superfund,* EPA concluded that: "Because (the chemical, petroleum and metal-processing) industries both produce and use the feedstocks taxed by the current CERCLA tax, it appears that the tax burden is primarily borne by these industries and their customers. This is consistent with the view that equity requires a rough correlation between the industries paying the CERCLA tax and the industries responsible for Fund spending."

Not only does a connection exist between taxpayers and the problem, but the existing feedstock taxes have proven to be highly reliable and easily administered. If EPA would only spend the money raised by these taxes, we would be facing less pressure to expand the fund to the level which the public now demands.

The Superfund VAT is unfair and inappropriate. Adopting a complicated regressive tax at a time when we are struggling to reform our tax code to make it simpler and fairer is hypocritical. The burden of the VAT will fall on 38,000 companies required to pay the tax and millions of American consumers who have little or no connection to the hazardous waste problem. Superfund's tax base should be expanded to include those who generate waste and this can be done through the waste-end tax. The problem of hazardous waste is serious. But let's not throw away the basic pinnings of our tax system because we are unable to take the time to make tough decisions on how to pay for the problem of hazardous waste. The polluter must pay for the legacy of decades of negligent waste disposal and the program must be supported by stable, reliable, and carefully targeted tax revenues.

THOMAS J. DOWNEY.
DAN ROSTENKOWSKI.
ROBERT T. MATSUI.
BRIAN DONNELLY.
CHARLES B. RANGEL.
DONALD J. PEASE.

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99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT 99-253
Part 3

SUPERFUND AMENDMENTS OF 1985

OCTOBER 31, 1985.—Ordered to be printed

Mr. RODINO, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2817]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the bill as reported from the Committee on Energy and Commerce) are as follows:

1. Page 30, line 6, delete "This" and all that follows through line 10.

2. Page 43, strike out line 9 and all that follows through line 14 on page 52 and insert in lieu thereof the following:

> **SEC. 113. LITIGATION, JURISDICTION, AND VENUE.**
>
> (a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:
>
> "(f) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) **Contribution; Statute of Limitation.**—Section 113 of CERCLA is amended by adding the following new subsections after subsection (f):

"(g) Contribution.—

"(1) Contribution.—Except as provided in paragraph (2), any person potentially liable or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. In any such contribution action in a court of the United States, the court may use its equitable powers to apportion costs among the liable parties, taking relevant equitable considerations into account. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

"(2) Settlement.—A person who has resolved its liability to the United States or a State in a judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(3) Persons not party to settlement.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the Secretary may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may bring an action for contribution or indemnification against any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(h) Statute of Limitations.—

"(1) Actions for natural resource damages.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following—

"(A) The date of the discovery of the loss.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the national priorities list, any federal facility identified under section 120, or any facility at which a remedial action is otherwise scheduled, an action for damages must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities), but in no event may an action for damages with respect to such a facility be commenced before selection of the remedial action. The limitation in the preceding sentence on commencing an action before selection of the remedial action does not apply to actions filed on or before December 11, 1983.

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107(a) must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 3 years after initiation of physical on-site construction of the remedial action, provided that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph. In any such initial action, the court shall enter a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs. A subsequent action or actions under section 107 for further response costs at the facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

"(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out the word "subsection" and inserting in lieu thereof the words "subsections," and inserting "and (i)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(i) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 of any order issued under section 104(b) or to review any order issued under section 106(a), in any action other than one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution indemnification.

"(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site. Such an action may be maintained during the course of construction and implementation of the remedial action, where the person bringing the action alleges that the specific remedial measures being taken are in violation of this Act.

"(5) An action by the United States under section 106 for injunctive relief.

"(6) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has made a commitment to undertake a remedial investigation and feasibility study and to perform or cause to be performed all of the judicially approved remedial action.

"(7) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has agreed to perform or cause to be performed all of the judicially approved remedial action.

"(8) A motion by a potentially responsible party who is a recipient of an administrative order under section 106 to review the Administrator's selection of the remedy, where the recipient of the order has, without admitting that the release in question constituted an imminent and substanital endangerment under section 106 and without admitting liability, agreed to the terms of the order except for the Administrator's selection of the remedy. In such cases, the order shall be entered in the District Court as a consent decree.

In ruling on motions under paragraphs (6), (7), and (8), the District Court shall act without delay and shall rule expeditiously. There shall be no right of appeal by any party from such ruling.

"(j) INTERVENTION.—In any action commenced under subsection (i), any person may intervene as a matter of right when such person claims a direct public health interest or a direct interest in the environment relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

"(k) JUDICIAL REVIEW.—

"(1) IN GENERAL.—For purposes of judicial review under this section, the administrative record shall consist of (A) in the case of a removal action, the record developed under regulations issued pursuant to subsection (1)(2)(A), and (B) in the case of a remedial action, the record developed under subsection (1)(2)(B).

"(2) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. Objections and evidence which were not made a part of the administrative record may be considered by the court only if such objections and evidence were not reasonably available when the record was being developed.

"(3) STANDARD.—In considering objections raised in any judicial action under section 106 or 107, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

"(4) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

"(5) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(l) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The Administrator shall establish an administrative record upon which the Administrator shall base the selection of a response action. The record shall consist of (A) in the case of a removal action, the record developed under regulations issued pursuant to paragraph (2)(A), and (B) in the case of a remedial action, the record developed under paragraph (2)(B). The administrative record shall be available to the public at or near the facility at issue. The Administrator also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION REGULATIONS.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the Administrator will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION REQUIREMENTS.—The Administrator shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the Administrator will base the selection of remedial actions and on which judicial review of remedial actions will be based. The administrative record under this subparagraph shall include, at a minimum, the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statment of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

"(C) POTENTIALLY RESPONSIBLE PARTIES.—The Administrator shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability under this Act.".

(d) REIMBURSEMENT.—Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the revelant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with section 2412 (a) and (d) of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) tha tit is not liable for any response costs may also receive compensatory damages.

"(F) In any action under section 113(i), if the remedial action conducted under an administrative order or consent decree is determined to be arbitrary an capricious or otherwise not in accordance with law, any person who has complied with the terms of any administrative order or consent decree issud under subsection (a) may petition the Administrator for reimbursement from the fund for the reasonable costs of such action, including interest. The Administrator shall grant such petition for all reasonable response costs incurred by the petitioner pursuant to the portions of the administrative order or consent decree found to be arbitrary and capricious or otherwise not in accordance with law.

"(G) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.".

Page 80, after "circulation." on line 3 insert the following:

> In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

Page 107, after "person." on line 2 insert the following: "If the Administrator decides not to use the procedures in this section, the Administrator shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. The decision of the Administrator not to use the procedures in this section are not subject to judicial review.".

3. Page 85, insert the following after line 15:

"(D) INDEMNIFICATION.—(1) The Administrator may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) This subsection shall apply only with respect to a response action carried out under a written or agreement with—

"(A) the Administrator;

"(B) another Federal agency; or

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title.

"(3) This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 11 of title 41 of such Code.

"(e) LIABILITY OF OTHER PERSONS UNAFFECTED.—Nothing in this section shall affect the liability under this title or under any other Federal or State law of any person other than a response action contractor.

Page 85, line 16, strike out "(d)" and substitute "(f)"; page 86, line 4, strike out "(e)" and substitute "(g)"; and page 86, line 3, after "facility." add the following:

> The term 'response action contractor' also includes any person retained or hired by a response action contractor (as defined in the preceding sentence) to provide any services relating to a response action.

Page 84, line 20, strike out "reckless, or" and insert in lieu thereof "grossly negligent, or which constituted".

4. Page 114, strike out line 24 and all that follows through line 11 on page 115, and insert in lieu thereof the following:

"(g) DE MINIMIS SETTLEMENTS.—Whenever practicable and in the public interest, as determined by the Administrator, the Administrator shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107, if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the Administrator, the conditions in either of the following subparagraphs are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, or disposal of any hazardous substance.

"(2) The Administrator shall provide a covenant not to sue with respect to the facility concerned, or grant a release from liability with respect to the facility concerned, to any party who has entered into a settlement under this subsection, unless such a covenant or release would be inconsistent with the public interest as determined under subsection (f).

"(3) The Administrator shall reach any such settlement, grant any such covenant not to sue, or grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement, grant such a covenant, or grant such a release from liability.

"(4) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The district court for the district in which the release or threatened release occurs may enforce such order.

"(5) A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement that was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

"(6) Nothing in this subsection shall be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under this Act.

5. Page 115, after line 11, insert the following (and redesignate subsection (h) as subsection (i)):

"(h) EPA COST RECOVERY SETTLEMENT AUTHORITY.—(1) The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs and damages incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Any claim for costs and damages which in the aggregate is in excess of $500,000 (excluding interest) may be compromised only with the prior written approval of the Attorney General or his designee.

"(2) A settlement under this subsection shall be final and conclusive as to the matters addressed in the settlement, unless the settlement was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact. No court shall have jurisdiction to review the settlement unless there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, other misconduct, or mutual mistake of fact.

"(3) Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States Government under this section. After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection. An arbitration under this subsection shall be final and conclusive to the extent provided in paragraph (2).

"(4) If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(5) A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

6. Page 136, strike out line 10 and all that follows through line 24 on page 139 and insert in lieu thereof the following:

SEC. 207. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who—

"(A) is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

"(B) has contributed or who is contributing to the actual or threatened release of any hazardous substance from a facility if such release may present an imminent and substantial endangerment to health or the environment; or

"(2) against—

"(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

"(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

"(b) Venue.—

"(1) Actions under subsection (a)(1).—Any action under subsection (a)(1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action under subsection (a)(1)(B) shall be brought in the district court in which the release occurred.

"(2) Actions under subsection (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

"(c) Relief.—The district court shall have jurisdiction in actions brought under subsection (a)(1)(A) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(1)(B) to immediately restrain any person contributing to the endangerment referred to in subsection (a)(1)(B), to order such person to take response action as provided for under this Act, or both. The district court shall have jurisidiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

"(d) Subsection (a)(1) Actions.—

"(1) Notice.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or disposal—

"(A) to the Administrator;

"(B) to the State in which the alleged violation or release occurs; and

"(C) to any alleged violator or person who contributed or is contributing to the release. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

"(2) Actions under paragraph (1).—No action may be commenced under subsection (a)(1) if the Administrator—

"(A) has commenced and is deligently—

"(i) pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement, "(ii) pursuing an administrative order or civil action to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, or

"(iii) prosecuting an action in court under section 106 of this Act, or under section 7003 of the Solid Waste Disposal Act, with respect to such violation or endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such violation or endangerment;

"(C) is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or has completed a remedial investigation and feasibility study and is diligently proceeding with a response action with respect to such violation or endangerment; or

"(D) has obtained a court order (including a consent decree) under section 106 of this Act or under section 7003 of the Solid Waste Disposal Act under which any responsible party—

"(i) is diligently conducting a removal action,

"(ii) is diligently proceeding with a remedial investigation and feasibility study, or

"(iii) has completed a remedial investigation and feasibility study and is diligently proceeding with a response action, with respect to such violation or endangerment.

In the case of an administrative order referred to in subparagraph (A), actions under subsection (a)(1)(B) are prohibited only as to the scope and duration of such administrative order.

"(3) ACTIONS UNDER PARAGRAPH (1)(B); STATE ACTIVITY.—No action may be commenced by any person other than the State under subsection (a)(1)(B) if, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, the State—

"(A) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) with respect to such endangerment;

"(B) is actually engaging in a removal action under section 104 with respect to such endangerment; or

"(C) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104(b) of this Act and is diligently proceeding with a remedial action under this Act.

"(4) STANDING.—For purposes of this section, only a person who has an interest which is or may be adversely affected may bring an action under section (a)(1)(B).

"(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

"(h) INTERVENTION.—(1) In any action under this section the United States, if not a party, may intervene as a matter of right.

"(2) In any action under this section, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

"(i) FEDERALLY PERMITTED RELEASE.—It shall be a defense in an action under subsection (a)(1)(B) if the defendant establishes that the release referred to in such subsection (a)(1)(B) was a federally permitted release as defined in section 101(10) (except that for purposes of this section, the phrase 'permit application' in subparagraph (C) shall not apply).

"(j) DEFINITIONS.—As used in this section—

"(1) IN GENERAL.—The terms used in this section shall have the same meaning as when used in title I, except as specifically provided in this subsection.

"(2) RELEASE.—The term 'release' means the discharge, deposit, injection, dumping, spilling, leaking, treating, storing, of placing of any hazardous substance into or on any land or water, except that such term shall not include any activity referred to in subparagraph (A), (B), (C) or (D) of section 101(22).

"(k) PESTICIDES.—No action may be brought under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under, or whose application is otherwise authorized under, the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, (1) for damages, injury, or loss resulting from a release of any hazardous substance or (2) for removal or remedial action or (3) for the costs of removal or remedial action for such hazardous substance."

BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510 (CERCLA or "Superfund"), established a hazardous waste clean-up program. Funds for Superfund, which are placed in a trust fund which finances the program, are currently provided by a tax on crude oil and chemical feedstocks and by a contribution from federal funds.

CERCLA has two goals: (1) to provide for clean-up if a hazardous substance is released into the environment or if such release is threatened, and (2) to hold responsible parties liable for the costs of these clean-ups.

Under CERCLA, the Environmental Protection Agency (EPA) has two basic methods for accomplishing these goals. First, under section 104, EPA may use Superfund money to clean up a hazardous waste site and then, under section 107, institute a civil action against responsible parties to recover the costs of that clean-up. Second, under section 106, EPA may either issue an administrative order requiring a responsible party to clean up the site, or EPA may seek a mandatory court order directing a responsible party to perform the clean-up.

Liability for the cost of clean-ups under CERCLA is "strict joint and several". In other words, liability may be imposed without fault, and each responsible party may be held liable for the entire cost of clean-up, even if that party's contribution to the waste site was minimal.

Since the enactment of CERCLA, there has been criticism both of the Act itself and of EPA's implementation of the Act. There has also been substantial litigation to define CERCLA's sometimes ambiguous provisions and to resolve controversies created, but not addressed, by the terms of the Act. H.R. 2817 seeks to address these criticisms and to resolve these ambiguities and controversies.

At the heart of the Superfund—and of the reauthorization process—are many complex legal and judicial issues that reflect the tensions inherent in the Act itself: first, the need for the effective and speedy clean-up of hazardous waste sites in order to protect human life and the environment; second, the need to protect the interests and rights of those affected by these sites in obtaining effective and speedy clean-ups; and third, the need to protect the interests and rights of those who may be held liable for such clean-ups.

The legal and judicial issues raised by the reauthorization of CERCLA fall directly within the jurisdiction of the Committee on the Judiciary. Therefore, the Committee received a sequential referral of H.R. 2817 so that it could examine these issues.[1]

The Committee carefully examined the legal and judicial provisions of H.R. 2817 and of CERCLA. Its amendments seek to ensure that these provisions facilitate effective and fair enforcement of the Act. The Committee worked to strike a balance between the need to protect the rights of those affected by hazardous waste sites (both those potentially harmed by those sites and those responsible for the clean-up of those sites) and the need to ensure speedy clean-ups of hazardous waste sites.

The Committee believes that H.R. 2817 is essential legislation that provides for the reauthorization of an important program. This legislation will, if fairly and effectively administered in keeping with this Committee's recommendations, assure the clean-up of dangerous hazardous waste sites that threaten the health and safety of our people and our land.

COMMITTEE ACTION ON H.R. 2817

The subcommittee on Administrative Law and Governmental Relations held two hearings to examine the legal and judicial issues raised by H.R. 2817, the "Superfund Amendments of 1985." The witnesses at these hearings were as follows:

Hearing on July 17, 1985

Mr. Hank Habicht, Assistant Attorney General, Land and Natural Resources Division, Department of Justice.

Mr. Lee Thomas, Administrator, accompanied by Gene Lucero, Director, Office of Waste Programs Enforcement, Environmental Protection Agency.

Mr. James H. Russell, Esq., Baker and Hostetler.

Mr. Timothy L. Harker, Esq., Kadison, Pfaelzer, Woodard, Quinn, and Rossi.

Mr. T. Lawrence Jones, President, accompanied by Dennis Conolly, Vice-President, Liability, representing the American Insurance Association.

Hearing on July 18, 1985

Mr. Douglas Farbrother, Principal Director of the Deputy Assistant Secretary of Defense for Installations, Department of Defense.

Ms. Janet Hathaway, Esq., representing Congresswatch.

Ms. Michele Corash, Esq., representing the American Petroleum Institute.

Mr. Edmund B. Frost, Esq., Kirkland and Ellis, representing the Chemical Manufacturers Association.

Mr. Randy Mott, Esq., representing the National Association of Manufacturers.

Mr. Clifford J. Harvison, Managing Director, representing the National Tank Truck Carriers.

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[1] H.R. 2817 was referred jointly to the Committees on Energy and Commerce, Public Works, and Ways and Means. The Committee on Merchant Marine and Fisheries received a sequential referral of the bill, as did the Judiciary Committee.

The Subcommittee considered amendments to H.R. 2817 on September 12 and September 18, 1985. On September 18, 1985, the Subcommittee, by voice vote, favorably recommended H.R. 2817 to the full Committee, with amendments.

On October 8, 1985, the Committee considered H.R. 2817 and adopted the subcommittee amendments as well as additional amendments. It then favorably reported H.R. 2817 to the House with these amendments.

DISCUSSION OF JUDICIARY COMMITTEE AMENDMENTS

The Judiciary Committee focused its consideration of H.R. 2817 on those portions of the bill which fall within its jurisdiction: the legal and judicial issues raised by the reauthorization of the Comprehensive Environmental Response, Compensation, and Recovery Act (CERCLA or "Superfund"). The amendments which the Committee adopted would alter provisions in Sections 107, 113, 116, 118, 121, and 207 of H.R. 2817 (existing or new Sections 107, 113, 117, 119, 122, and 310 of CERCLA).

Amendments to Section 107: Liability

Section 107 of CERCLA sets forth the provisions imposing liability for the cost of hazardous substance clean-ups under the Act.

Section 107(f) of H.R. 2817 adds a new subsection 107(k) to CERCLA. This new subsection provides for a lien in favor of the United States for the value of improvements to real property resulting from a response action. Response actions may cause substantial increases in the value of the land on which these actions are taken. Thus, the purpose of these liens is to ensure that the owners of the property where a clean-up has occurred will not receive a windfall profit as a result of the clean-up. The Committee supports this approach.

However, the Judiciary Committee did make one amendment to new subsection 107(k)(3) by deleting the last sentence of this paragraph. While the Committee recognizes that the overall tone of the new section reflects sensitivity to the needs of commercial interests, this last sentence, which appears to have been inserted as a saving clause, created an unnecessary legal problem. That is, if EPA failed to file its notice of lien in a timely fashion, that lien would have nonetheless had priority over a third party lien which was filed prior in time if the third party had or reasonably should have had actual notice or knowledge that EPA had incurred costs which would have given rise to a lien.

Retention of this savings clause would have undoubtedly result in uncertainty as to property rights, as well as in unnecessary litigation. The private sector is accustomed to using a title search of public records to determine the legal interests in real estate. Title insurance can be obtained to insure the accuracy of such a search and attorneys can reasonably advise their clients based on such a search. If, in all cases, EPA must file its lien notice in these public records, the commercial community will be on effective notice, both practically and legally, of EPA's interest in the property. Without this certainty, unnecessary confusion would have been created and costs of title insurance increased to no benefit.

For these reasons, the Committee deleted this sentence from the bill. The Committee believes that as a matter of standard business practice, EPA can address any problem that this provision was intended to solve by adopting a procedure of filing a notice of lien just prior to or immediately after the first meeting of potentially responsible parties. In that way, the priority of the Federal government's interest, if any problem subsequently arises, will be assured.

In connection with new subsection 107(k)(1), the Committee would also like to note its understanding of the language referring to land "affected by" a response action.

In some cases, the clean-up may be of only a portion of an entire parcel of land. In order for the federal lien not to be limited just to the portion of the parcel that was the direct subject of a response action, the subsection provides that the lien is extended to property "affected by" the response action. The Committee agrees that the lien should appy to the title to the entire property on which the response action was taken. However, it believes that it is important that the term "affected by" be interpreted accurately, for it is not intended to extend the lien to the title of other property held by the responsible party.

Amendments to Section 113: Litigation, Jurisdiction, and Venue

Section 113 of H.R. 2817 amends existing section 113 of CERCLA, which is entitled "Litigation, Jurisdiction, and Venue". This section, as reported by the Committee on Energy and Commerce, sets forth a number of administrative and judicial procedures applicable to Superfund decision-making and litigation. It also clarifies the availability of judicial review regarding contribution claims and settlements, and places limits on judicial review of the selection of a clean-up remedy. The Judiciary Committee reviewed this section in detail and has recommended changes to a number of its provisions. Some of these changes are technical or clarifying in nature, others are substantive.

I. CONTRIBUTION: NEW SUBSECTION 113(g) OF CERCLA

New subsection 113(g) of CERCLA deals with the availability of contribution in claims under Superfund. The Judiciary Committee amendment to new section 113(g) of CERCLA confirms, as did the Energy and Commerce Committee version, that potentially responsible parties have a right of contribution under CERCLA. However, as reported by the Energy and Commerce Committee, this section contained several technical problems. The Judiciary Committee amendment to this provision corrects these problems.

The Judiciary Committee amendment to new subsection 113(g)(1) changes "defendant alleged or held to be liable" to "person potentially liable or held to be liable". This simply clarifies and emphasizes that persons who settle with EPA (and who are therefore not sued), as well as defendants in CERCLA actions, have a right to seek contribution from other potentially responsible parties.

New subsection 113(g)(1) of CERCLA was also amended by the Committee to ratify current judicial decisions that the courts may use their equitable powers to apportion the costs of clean-up among the various responsible parties involved with the site. The Committee emphasizes that courts are to resolve claims for apportionment on a case-by-case basis pursuant to Federal common law, taking relevant equitable considerations into account. Thus, after all questions of liability and remedy have been resolved, courts may consider any criteria relevant to determining whether there should be an apportionment.

Relevant criteria for the courts to use in deciding whether to grant apportionment may include: the amount of hazardous substances involved; the degree of toxicity or hazard of the materials involved; the degree of involvement by parties in the generation, transportation, treatment, storage, or disposal of the substances; the degree of care exercised by the parties with respect to the substances involved; and the degree of cooperation of the parties with government officials to prevent any harm to public health or the environment. See *United States* v. *A&F Materials Co.,* 578 F. Supp. 1249 at 1256 (S.D. Ill, 1984). Of course, the burden of proof is on the defendant or party seeking apportionment to establish that it should be granted. *United States* v. *Chem-Dyne Corp.,* 572 F. Supp. 802 at 810 (S.D. Oh., 1983).

Under new subsection 113(g)(2) of CERCLA, as reported by the Energy and Commerce Committee, a "judicially approved good faith settlement" with the government gives the settling party protection from the contribution claims of other potentially liable parties concerning the matters addressed in the settlement. The Judiciary Committee amendment to this paragraph deletes "good faith" as an independent requirement for obtaining immunity from contribution claims. The amendment recognizes that judicial examination and approval of the settlement itself is adequate to protect against improper or "bad faith" settlements. Before initially approving a consent decree under CERCLA, a court must satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCLA is intended to serve. Because this process ensures that the "good faith" of the settlement is examined by the court, a supposedly separate requirement of good faith in the contribution section would lead to unnecessary confusion, would cast doubt on the availability of contribution protection under the section, and would lessen the incentive for settlement created by such protection.

The Judiciary Committee amendment to new subsection 113(g)(2) of CERCLA also clarifies that entry into a judicially approved settlement with the government protects a party only against the contribution claims of other potentially liable parties, and not against indemnification claims. Contribution is a statutory or comon law right available to those who have paid more than their equitable share of an entire liability. Indemnity is a right arising from a contract or a special relationship between parties. Settlement with the government under CERCLA should not abrogate independently existing rights of persons to indemnity.

The amendment to this subsection also makes clear the distinction between parties to the settlement agreement (who are discharged from liability by the agreement) and other persons who are potentially liable under section 107. These other persons remain potentially liable for the amounts not received by the government through the settlement. The amendment emphasizes this distinction by using the terms "person" and "potentially liable persons" in place of the terms "party" and "parties."

The Judiciary Committee made a technical amendment to new subsection 113(g)(3)(A) of CERCLA (as redesignated by the amendment) which affirms the ability of the United States or a State to maintain an action for injunctive relief under section 106 or cost recovery under section 107 against nonsettlors when a settlement does not provide complete relief. The right of the United States to proceed under section 106 or 107 is unaffected by its status as an owner or operator of a facility or a generator of waste at the site. In addition, when the United States has been required to pay response costs as a liable party, the United States may maintain an action to recover costs from other responsible parties.

New subsection 113(g)(3)(B) of CERCLA was added by the Judiciary Committee to expressly provide to settlors the right to seek contribution from nonsettlors. The Committee included this provision to encourage settlements and to avoid problems that might otherwise arise due to the courts' reluctance to imply new private rights of action under federal statutes. As reported by the Energy and Commerce Committee, new section 113(g) of CERCLA had not by its terms affirmatively provided an express right of contribution to parties who settle with the government for some or all of the costs of a clean-up.

Finally, new subsection 113(g)(3)(C) as amended by the Committee provides that the United States' rights against nonsettling parties under the section are superior to the rights of private settlors, but should not necessarily be superior to the rights of the States against nonsettling parties. The amendment ensures that the United States and the States have equivalent rights under the section.

These amendments to the contribution section will improve its effectiveness, ensure its fair operation, and encourage settlements by responsible parties.

II. STATUTES OF LIMITATIONS: NEW SUBSECTION 113(h) OF CERCLA

The Committee believes that cost recovery and damages actions should be brought at the most appropriate time in light of the response action taken, and that in general these actions should be brought as early as EPA has the necessary information to do so. Therefore, the Committee amenement provides revised statutes of limitation for bringing natural resource damages actions and cost recovery actions under section 107.

The Committee amendment to new section 113(h)(1) of CERCLA, as reported by the Energy and Commerce Committee, alters the statute of limitations for natural resource damages. The amendment ensures that actions for natural resource damages are filed at the most appropriate time for the particular site involved. Because a remedial action at the site may include the restoration, rehabilitation, or replacement of natural resources, an action for natural resource damages for a site on the National Priorities List (NPL) should not take place before the remedy has been selected. The limitation established by the amendment on filing damages actions before selection of the remedy does not apply to actions filed before expiration of the original statutory deadline for recovery of pre-CERCLA damages. Actions filed subsequent to that time in cases where the remedy has not yet been selected should be dismissed without prejudice by the courts as unripe for review.

This amendment recognizes that the national resources damages assessment at NPL sites should, whenever possible, take place while the remedial investigation and feasibility study (RI/FS) is underway. It also recognizes that the planning of any restoration or rehabilitation efforts should, whenever possible, be integrated with the planning of the remedial action. The limitation period running from completion of the remedial action will allow integration of cost recovery and damages actions. The amendment also contemplates that the court will review the record compiled to determine the remedy together with the record compiled for assessing damages, and will, wherever practicable, rule on them together. For sites not on the NPL or not otherwise scheduled for remedial action, the three-year limitations period (following discovery of the loss) will apply.

The Judiciary Committee amendment also modifies new section 113(h)(2) of CERCLA. For removal actions, the government will be required to bring a cost recovery action within three years after completion of the removal action, except when a waiver to allow for continued response actions has been granted under section 104(c)(1)(C). In the event of such a waiver, the cost recovery action must be brought within six years of the granting of the waiver.

The Committee amendment to new subsection 113(h)(2) contemplates that there may be successive cost recovery actions brought at various points during implementation of a remedial action. The statute of limitations provided by this amendment for the initial cost recovery action for a remedial action is three years from the commencement of physical on-site construction of the remedial action, that is, after the RI/FS and after design of the remedy. However, the final cost recovery action must be commenced within three years of the completion of the remedial action. If a remedial action is commenced within three years of the completion of a removal action, costs incurred in the removal action may be added to those sought for the remedial action. In other words, there is no intention to mandate separate cost recovery actions for removal and remedial actions so long as they follow each other within a three year time period. In the initial cost recovery action, in order to conserve judicial time and resources, the court is to enter a declaratory judgment on liability for response costs; this judgment will be binding in future cost recovery actions to obtain additional costs. The Committee believes that this amendment addresses the concerns raised by the court in *United States* v. *Mottolo,* No. 83-547-D (D.N.H. July 18, 1985, and August 15, 1985) (orders issued). The Committee notes that the alternative of a single phased trial dealing sequentially with the recovery of costs for different segments of the response action remains available.

III. PRE-ENFORCEMENT REVIEW: NEW SUBSECTION 113(i) OF CERCLA

H.R. 2817, as reported by the Energy and Commerce Committee, added a new subsection 113(i) to CERCLA. Generally, this subsection precludes judicial review of EPA's selection of a response action, except in four limited cases: first, when the agency seeks to enforce its decision against a responsible party; second, when the responsible party seeks reimbursement; third, when there is an action for an injunction (court order to clean-up) under section 106; and fourth, where a responsible party who has reached a settlement with EPA to conduct a remedial investigation and feasibility study and to clean-up a site.

The Judiciary Committee believes that somewhat broader access to judicial review of the selection of a response action need not prevent expeditious clean-ups, and that the availability of such review is necessary as a check on agency decision-making and to assure the selection of proper action. In addition, the degree to which the Energy and Commerce Committee version of H.R. 2817 precludes pre-enforcement judicial review raises constitutional due process concerns, as well as concerns regarding basic fairness.

For these reasons, the Judiciary Committee concluded that H.R. 2817 should be modified to provide for some additional access to judicial review of the selection of a response action by EPA. At the same time, however, the Committee intends to ensure that the clean-up of sites will not be delayed by this additional access judicial review.

Therefore, the Judiciary Committee amendment reaffirms that, in the absence of a government enforcement action, judicial review of the selection of a response action should generally be postponed until after the response action is taken. Similarly, in an enforcement action, the scope of judicial review is limited to reviewing the enforcement requested. Thus, the Judiciary Committee reported subsections 113(i)(1), (2), and (3) which are identical to the same subsections as reported by the Energy and Commerce Committee.

New subsections 113(i)(1) and (i)(2) reiterate the current ability of affected parties to obtain review of the Administration's selection of response actions when the government has instituted an action for cost recovery, an action to enforce an order under sections 104(b) or 106(a), or an action to recover penalties for the violation of such an order. However, when the government seeks to enforce an order for an RI/FS under section 104(b), the court's review of the order is limited to issues concerning performance of that study, and may not extend to questions relating to the scope of the remedy. These two paragraphs now set forth in statutory language the only type of review that courts have generally interpreted as being available under the CERCLA as originally enacted.

New section 113(i)(3), as reported by the Energy and Commerce Committee and now by the Judiciary Committee, provides an opportunity for review of an action brought under new section 106(b)(2)—when a party has received and complied with the terms of a 106(a) order and then petitions the Administrator for reimbursement of costs associated with compliance. Because the reasonableness of the order will be explored in the reimbursement hearing, and because the parties receiving the order have cooperated with the Administrator in complying with the order, the Committee agrees with the Energy and Commerce Committee that review at this point will be desirable for the parties and will not needlessly disrupt the clean-up process.

The Judiciary Committee amendment modified new subsection 113(i)(4), as reported by the Energy and Commerce Committee, to clarify the right of persons to seek review of response actions under the new citizens suits provisions of CERCLA, which would be established by this Act (Section 207 of H.R. 2817, new Section 310 of CERCLA). With this modification, persons may seek review of remedial actions (*not* removal actions) during construction and implementation of such actions when a specific remedial measure that has been constructed is allegedly in violation of a requirement of this Act. Actions under this provision will be subject to all the bars and time limits set forth in the citizens suits provision.

This provision is not intended to allow review of the selection of a response action prior to completion of the action: the provision allows for review only of an "action *taken* . . ." (italics added). Thus, after the RI/FS has been completed, the remedial action has been selected and designed, and the construction of the selected action has begun, persons will be able to maintain suit to ensure that a specific on-the-ground implementation of the response action is consistent with the requirements of the Act. For example, a suit under this provisions may be appropriate where a specific aspect of the remedial action, *which has been taken*, in fact fails to attain a standard required under this Act. The Committee emphasizes that this paragraph is not intended to allow delay of the clean-up and that, in actions under this paragraph, courts should not entertain claims to re-evaluate the selection of remedial action. Also, in reviewing actions under this subsection, the courts should use their powers to ensure that such review does not disrupt clean-up remedies.

New subsection 113(i)(5) was amended by dividing it into two parts. This division, along with technical changes to the language of the resulting new subsections 113(i)(5) and 113(i)(6), was intended to clarify the intent of the provisions.

New subsections 113(i) (7) and (8) were added by the Judiciary Committee. These subsections provide two additional narrow exceptions to the general rule postponing review until the government undertakes enforcement activities. The Committee added these provisions because it believes that when potentially responsible parties are willing to commit to undertaking a remedial action, such parties (like those under new subsection 113(i)(6)) should be able to petition the court for early resolution of disputes over the Administrator's selection of a remedial action. New subsection 113(i)(7) allows for review when a consent decree under section 106 specifically provides for the party's performance of the remedial action and the only issue outstanding is the scope of the remedial action. New subsection 113(i)(8) allows for review when a potentially responsible party has agreed, without admitting liability, to the terms of an administrative order except for the scope of the remedy. Thus, the party will have obligated itself to perform the remedy and the only issue the court will be reviewing under the order will again be scope of the remedy.

In cases under subsections 113(i) (6), (7), and (8), where review of the remedy is occurring pursuant to a consent decree or administrative order, the Committee expects that courts will rule expeditiously. This will allow remedial actions to proceed without delay in order to ensure rapid clean-ups. Furthermore, to avoid undue delay, the amendment provides that all parties will be bound by the district court's decision and that the parties may not appeal the decision.

In general, it is the Committee's expectation that in cases brought under new subsection 113(i) the courts will grant a stay of the performance of a response action only rarely, if at all, because of the importance of expeditious clean-up of hazardous waste sites. A litigant seeking a stay must, as in any similar action, be able to establish irreparable harm and the likelihood of success on the merits. Financial loss to a potentially responsible party will not suffice to establish irreparable harm, particularly in view of the reimbursement provision set forth in new subsection 106(b) of CERCLA (discussed below). Moreover, in these cases under CERCLA, a party seeking a stay must establish that the stay would be in the public interest.

Finally, the Committee amendment adds a new subsection 113(j) to CERCLA to provide that any person may intervene as a matter of right when that person claims a direct public health or environmental interest in the subject of a judicial action allowed under this section, and when the disposition of the action may impair or impede the person's ability to protect that interest. When a motion to intervene is granted under this section, the intervenor shall only be able to raise issues relating to the selected remedy. Issues not directly related to the selection of remedy should not be entertained by the court because the purpose of review under new subsection 113 of CERCLA is only to resolve issues relating to the remedy. Moreover, nothing in this provision is intended to make intervenors necessary parties to any consent decree referred to in this section or to interfere with the rights of the United States to enter into settlements with potentially responsible parties under this Act.

IV. JUDICIAL REVIEW: NEW SUBSECTION 113(k) OF CERCLA

The Energy and Commerce Committee included several provisions in new subsection 113(k) (designated (j) in the Energy and Commerce version) on judicial review of sections 106 and 107 of CERCLA. The Judiciary Committee made a number of modifications to the subsection to conform the provisions more closely to standard administrative practice.

The Judiciary Committee amendment modifies new subsection 113(k)(1) to clarify that judicial review of the Administrator's selection of a response action shall be based on the administrative record developed pursuant to subsection 113(l)(2) (previously designated (k)). The purpose of this modification is to ensure that the Administrator's decision is based on adequate information to which the public and potentially responsible parties have access.

The Committee also modified new subsection 113(k)(2) to provide that the administrative record which is the basis for judicial review may be supplemented by new objections and evidence that were not reasonably available when the administrative record was developed. This modificaton is consistent with accepted administrative practice.

The Committee affirms in adopting subsection 113(k) that the appropriate standard of judicial review for EPA decisions on response actions, as stated in subsection 113(k)(2) (and for reimbursement actions under new subsection 106(b)(2)(B) of CERCLA as established by subsection 113(d) of H.R. 2817), is "arbitrary and capricious or otherwise not in accordance with law." This standard, in use for many years under 5 U.S.C. 706(2)(a), is one with which courts and litigants are familiar and is the standard of review best suited to the type of decisions reached under the Act. Moreover, the Committee contemplates that its application to these proceedings will produce a minimum amount of litigation in order to define its scope and application. This Committee opposes the unnecessary creation of new and ill-defined standards of judicial review because the interpretation of such standards results in a waste of judicial resources, and because litigation on such new standards generally results in pointless costs to litigants.

V. ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES: NEW SUBSECTION 113(l) OF CERCLA

The Committee carefully examined the administrative and public participation procedures included in section 113(l) (designated subsection 113(k) in the Energy and Commerce version of H.R. 2817) and concluded that these provisions should be clarified and reorganized to conform to regular administrative law practices. Thus, the Committee amendment provides minimum participation requirements for removal actions in new subsection 113(l)(2)(A) and for remedial actions in new subsection 113(l)(2)(B). Generally, these provisions require that EPA base its selection of a clean-up remedy on the administrative record established under section 113(l) and that judicial review of EPA's decision be based on the same administrative record.

In addition, EPA is required under new subsection 113(l)(2)(A) to develop procedures for participation in the selection of a removal action. New subsection 113(l)(2)(B) sets forth specific participation procedures for the selection of a remedial action, including the requirements that: the material generated pursuant to the "on site" public participation procedures of new section 117 of CERCLA be placed in the administrative record established pursuant to section 113; the administrative record be available at or near the specific Superfund site; and the potentially responsible parties, as well as other interested persons, be notified of the intent to select a remedy and of the participation process.

The Committee notes that new subsection 113(l)(2)(C) states that the failure of EPA to satisfy the requirement that it notify potentially responsible parties and others of its intent to select a remedy will not constitute a defense to liability under CERCLA. The Committee expects that potentially responsible parties will be notified when feasible; however, it included this provision to ensure that failure to notify such parties will in no way prevent or delay a clean-up action or increase legal rights or remedies available to these parties.

VI. REIMBURSEMENT: NEW SUBSECTION 106(b) OF CERCLA

Section 113 of H.R. 2817, as reported by both the Judiciary and Energy and Commerce Committees, adds a new provision to section 106(b) of the CERCLA regarding reimbursement from the Fund. Under this provision, responsible parties may seek reimbursement from the Fund not only when they comply with an administrative order, but also when they enter into a consent decree and agree to undertake the work even though they believe that the Administrator's remedy is arbitrary or capricious. (See discussion of the reason for selecting this standard of judicial review in paragraph IV above.) If a court determines that a portion of the remedy is arbitrary and capricious or otherwise not in accordance with the law, the responsible party shall be reimbursed for the reasonable costs attributable to the portion of the response action held to be arbitrary and capricious or otherwise not in accordance with the law. By virtue of this provision, responsible parties are expected to continue work during judicial review.

Amendment to Section 116: Public Participation

Section 116 of H.R. 2817, as reported by the Committee on Energy and Commerce, adds a new Section 117 to CERCLA. The purpose of this provision is to require EPA to involve the community affected by a particular hazardous waste site in the process of deciding what actions are necessary to complete clean-up of that site. As that Committee stated in its report:

> "The Energy and Commerce Committee is of the strong opinion that communities affected by Superfund sites will demonstrate much stronger support for actions necessary to clean up those sites if the community is involved from the beginning in determining the actions which will be necessary to complete the cleanup." *Superfund Amendments of 1985,* H. Rpt. 99-253, Part 1, August 1, 1985, p. 90 (hereinafter "Report").

The Judiciary Committee agrees with this policy and, by its amendments to this section and section 113 (discussed above), intends to strengthen this requirement.

The purpose of the Committee amendment to new section 117 of CERCLA is to conform the requirements of this section to the changes the Committee made to new subsection 113(l). Thus, the amendment requires that the materials produced under section 117 be included in the administrative record on which the decision is based and that the entire administrative record be available at or near the specific Superfund site. The Committee included this requirement in both sections because it believes that persons who are directly affected by the hazardous waste site should have ready access to these important documents.

Amendments to Section 118: Response Action Contractors

Response action contractors (contractors) carry out the clean-up of hazardous waste sites under Superfund. Historically, contractors have sought sufficient insurance to protect against potential liabilities from third party claims and government lawsuits. These claims and suits are made on the basis of evolving state and Federal laws (including CERCLA), which have increasingly subjected contractors to strict or near absolute liability standards.

At present, insurance availability for response action contractors is diminishing, limits of coverage are being reduced, and premium rates are increasing by more than 50%–200%. Insurance industry sources estimate that only 10% of contractors' market needs are currently being met by insurers, and that by January, 1986, no insurance will be available. The present lack of insurance is already causing a reduction in the number of qualified contractors willing to participate in Superfund cleanups. As insurance becomes increasingly unobtainable over the next year, the availability of qualified contractors could diminish to the point of being acute, and the Superfund clean-up program could come to an abrupt halt.

It is important to understand that the principal risks normally covered by liability insurance are to defend against claims alleging negligence, and, if negligence is proven, to satisfy such claims. Put more simply, liability insurance covers negligence.

Section 118 of H.R. 2817, as reported by the Energy and Commerce Committee, establishes a new section 119 of CERCLA. This provision eliminates strict, joint and several liability for response action contractors. Instead, these contractors will be liable only if their actions at a site are negligent or grossly negligent, or if they constitute intentional misconduct. This limitation on liability was included in order to ensure that companies will be willing to perform clean-ups in the future, and in order to give a reasonable incentive for insurers to provide prospective insurance based on the traditional standard of performance that insurers cover (i.e. negligence). However, the current condition of the insurance industry (e.g., financial instability, lack of adequate insurance capacity) will probably prevent insurer's from providing adequate coverage to contractors for several years, even with the inclusion of this provision.

Currently, EPA tries to address this problem by agreeing to provide contractors with indemnification in the event of their negligence, except for cases involving gross negligence. Contractors contend that these EPA indemnification agreements are ineffective as substitutes for insurance for several reasons. First, Superfund does not directly authorize the obligation of resources for the purpose of indemnification. Consequently, claims based on these agreements may be held invalid under the Anti-Deficiency Act. Second, EPA indemnification does not apply to all parties (e.g., States, other Federal agencies) for whom contractors work under Superfund. Third, the indemnification agreements use Superfund as the source of funding, as opposed to general appropriations (the typical source of funding for Federal indemnification). Consequently, the indemnification is only good for the life of Superfund, and, therefore, does not provide sufficient "longterm" protection from liability.

The Judiciary Committee shares the concerns that led the Energy and Commerce Committee to limit response action contractor liability to only those situations where the contractors actions constituted negligence, gross negligence, or intentional misconduct. However, the Judiciary Committee also concluded that until adequate insurance coverage becomes available (or if it were again to become unavailable at some future time), substitute coverage must be made available to keep the Superfund clean-up program operative. Thus, the Judiciary Committee amendment to new section 119 of CERCLA authorizes indemnification agreements as a substitute for liability insurance when such insurance is either unavailable or insufficient.

The Committee amendment adds new subsections 119(d) and (e) to CERCLA. These subsections authorize the EPA Administrator to agree to indemnify response action contractors (including subcontractors) for liability arising out of the contractor's performance. The indemnification agreements may cover only liability which results from negligence, they may not cover liability arising from gross negligence or international misconduct on the part of the contractor. Thus, this section allows EPA to provide coverage equivalent to liability insurance. The Committee believes that this section, in combination with the new standard of liability for contractors contained in H.R. 2817, will provide adequate incentives for contractors to continue to participate in Superfund clean-ups.

The indemnification authority provided by this section may be offered *in the discretion* of the Administrator. The Committee strongly believes that such authority should be discretionary because:

—Discretionary indemnification allows EPA to provide an interim solution to the lack of insurance until the insurance community restores financial stability and is capable and willing to provide prospective insurance for these contractors.

—Discretionary indemnification, as opposed to mandatory indemnification, does not create a disincentive for insurers to provide prospective insurance by establishing the equivalent of a Federally instrusive insurance program.

—Discretionary indemnification allows EPA to provide Federal indemnification with appropriate limits (i.e., to provide it in amounts equivalent to, but not in excess of, adequate insurance coverage; to include deductibles; to set limits of coverage; to require the payment by contractors of a premium for indemnification coverage; and/or to offer it only as a supplement to available insurance, if available insurance is not adequate).

New subsection 119(d)(3) directly exempts EPA indemnification authority from Anti-Deficiency Act provisions and establishes general appropriations, not Superfund, as the source of funds for indemnification. Again, these steps are necessary to address the legitimate hazardous waste long-term liability concerns of contractors.

The Committee emphasizes its expectation that indemnification agreements will be made by EPA only when a contractor has made genuine efforts to obtain adequate insurance and has found it to be unavailable. Moreover, any indemnification agreement should provide protection only as to harm resulting from the fact that the contractor is cleaning up a hazardous waste site. Worksite accidents and injuries for which insurance is available cannot be covered by these agreements. If, for example, a truck driver for a contractor hits and injures a person, this accident should not fall withing the scope of an indemnification agreement. In addition, if in the same accident property is damaged or destroyed, the indemnification agreement should not cover these losses. However, coverage would be triggered if the truck was carrying hazardous wastes from the site and the accident caused leakage of hazardous waste. In such a situation, the indemnification should cover harm resulting from that leak.

The Committee also notes that any indemnification agreement should relate to the nature and magnitude of the risks involved in the response action being undertaken by the contractor. The intent of the Committee in adding this provision is to ensure that these contractors will reenter the market, thus any indemnification agreement must adequately address the legitimate risks their work entails.

Finally by simply authorizing EPA to provide indemnification, the Committee intends to allow for flexibility if regular marketplace forces lead to the availability of insurance for response action contractors in the future. In this event, EPA should not agree to provide indemnification.

In summary, this section, in combination with the new liability standards for contractors established by H.R. 2817, addresses the two major problems created by the current liability insurance shortage. First, it provides a reasonable incentive for insurers to provide prospective insurance to contractors. Second, it recognizes that regardless of the liability standard, it will be some time before insurers can provide adequate insurance, and, therefore, it provides an interim form of protection to keep the Superfund clean-up program functioning until insurers reenter the market.

Amendments to Section 121: Settlements

Section 121 of H.R. 2817, as reported by the Energy and Commerce Committee, establishes new section 122 of CERCLA. This new section sets forth a series of provisions designed to encourage and facilitate negotiated private party clean-ups of hazardous substances in those situations where negotiations have a realistic chance of success. The Judiciary Committee strongly agrees with the Energy and Commerce Committee that encouraging such negotiated clean-ups will accelerate the rate of clean-ups and reduce their expense by making maximum use of private sector resources. The Committee also agrees that this emphasis on negotiated clean-ups should not replace or diminish a strong and agressive enforcement policy, but rather should complement such a policy.

While strongly supporting this approach, the Judiciary Committee concluded that three amendments would improve the settlement section.

I. Amendment to New Subsection 122(a) of CERCLA

The Committee added a provision to new subsection 122(a) of CERCLA to require the Administrator to provide notice and an explanation to potentially responsible parties whenever he decides not to use the settlement provisions of the Act. This notice and decision shall not, however, be subject to judicial review. This provision is intended to encourage the Administrator to carefully consider entering into settlement procedures in appropriate cases; it is *not* intended to create any new legal rights for potentially responsible parties.

In connection with subsection 122(a), the Committee would like to note its understanding that the authorization to enter into a settlement agreement with any person to "perform" a remedial investigation or any other response action includes more than an agreement by that person to directly undertake a response action. This subsection also contemplates that the Administrator may reach agreements where the parties to the settlement undertake to *arrange for* performance of the response action. Circumstances may vary widely, from site to site, including the number of potentially responsible parties; the legal obligations of specific parties; the rights of parties as against each other; the geological and other characteristics of the sites; and the quantities and types of materials taken to the sites. It is therefore important that the Administrator have the flexibility in reaching settlements required to avoid unnecessary delays and excessive transaction costs. Agreements in which potentially responsible parties arrange for the work to be performed may be reached by the Administrator and may be preferable to the other parties, since the site may be located far from their facilities or personnel. Thus, a settling party may agree to hire a contractor to carry out a response activity, or may agree to establish and fund a trust, along with other responsible parties, that will in turn hire a contractor to perform the needed work. Such agreements to arrange for performance are clearly authorized by this section.

This type of settlement was reached, at the *Enviro-Chem* site in Zionsville, Indiana, where 269 companies entered into a consent decree to fund a trust that, in turn, paid an independent contractor (backed by a performance bond) to perform the work in accordance with technical specifications approved by the Administrator. This approach worked well. Negotiations and clean-up proceeded expeditiously, the contributing companies received an incentive in the form of a release when the trust was funded, transaction costs were held to a minimum, and both the Administrator and the State have subsequently concluded that the clean-up met applicable standards. Nothing in new section 122 of CERCLA should be construed to restrict or prohibit such settlements.

II. "De Minimus" Settlements: Amendments to New Subsection 122 (g) of CERCLA

The second Judiciary Committee amendment to this section modifies the provisions of new subsection 122(g) of CERCLA relative to *"de minimus"* contributors at a site. This provision, as reported by the Energy and Commerce Committee, authorized the Administrator to enter into small "cash out" settlements with individual potentially responsible parties where the circumstances warrant such settlements.

The Judiciary Committee amendment strengthens the *de minimus* settlement provision in several respects.

First, new subsection 122(g) has been made more positive and emphatic in requiring the Administrator promptly to exercise his authority to settle with *de minimus* parties whenever such settlements are practicable and in the public interest. This requirement applies only when the resulting settlement would in any event involve only a minor portion of the response costs at the facility concerned and when the person seeking to settle satisfies certain criteria.

The first set of criteria defining the persons who may fall within the *de minimus* provision, now redesignated subsection 122(g)(1)(A), is identical to the version reported by the Energy and Commerce Committee. If a person is a contributor of waste to the facility in issue, both the quantity and the hazardous effects of the substances contributed by the person to the facility must be minimal compared to the other substances at the facility in order for a *de minimus* settlement to be available.

These criteria are useful with respect to most of the categories of persons who may be liable under section 107(a) of CERCLA. However, they do not easily apply to a landowner who is liable as an "owner" of a "facility" under section 107(a), but who otherwise may be minimally related to the hazardous substance problem at the facility. Therefore, the Committee added to the *de minimus* provision a set of criteria by which landowners may qualify for these expedited settlements. The criteria for this type of *de minimus* settlement require that the potentially responsible party: (1) own the real property on or in which the facility is located; (2) not have conducted or allowed the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and (3) not have contributed to the release or threatened release through any act or omission.

In addition, such a landowner must not have had actual or constructive knowledge at the time the landowner purchased the property that such property was being or had been used for the generation, transportation, storage, treatment, or disposal of any hazardous substance. This additional requirement is intended, among other things, to preclude a settlement where a transfer of land is undertaken in order to avoid liability for a hazardous waste cleanup. In the event such a transfer occurs and there is a later settlement, the transfer would fatally taint that settlement and, if discovered at a later time, would be grounds for setting aside the settlement on the basis of fraud. It would also trigger the provision of new subsection 122(g)(5) of CERCLA, as added by this Committee, which states that a fraudulent settlement does not provide protection against suits for contribution (discussed below).

To ensure that settlements with *de minimus* parties provide such parties with an appropriate level of finality, new subsection 122(g)(2) requires the Administrator to provide covenants not to sue or releases from liability when doing so is in the public interest.

Both types of *de minimus* settlements are intended to relieve the covered parties from prolonged and costly litigation. Thus, new subsection 122(g)(3) requires the Administrator to reach settlements in these cases as soon as the necessary information is available to establish the party's *de minimus* status. It is the clear intention of this Committee that such settlements should be expedited and that every effort be made to reach them at the earliest possible moment. In the case of a landowner who meets the criteria of this subsection, settlements should be reached as soon as these criteria are established. There should be no need to wait until the completion of an RI/FS if the party's only connection to the hazardous waste site is ownership.

The settlement with a *de minimus* party may be incorporated into either a consent decree or an administrative order (as provided under new subsection 122(g)(4)). These settlements will protect the party against the contribution claims of other persons who are liable under the Act, unless a person seeking contribution can show that the settlement was achieved through fraud, misrepresentation, other misconduct, or a mutual mistake of fact (new subsection 122(g)(5)).

Although this amendment is primarily directed toward private parties who are minimal contributors of waste or who are otherwise minimally related to the hazardous substance problems at a facility, the Committee notes that federal agencies may also satisfy the *de minimus* criteria at particular facilities. Thus, when federal agencies fall within the criteria of this subsection, they too should be treated as *de minimus* parties.

In sum, as amended, the *de minimus* settlement provision is intended to confirm EPA's authority to enter into settlements which involve only small portions of total clean-up costs when the settlements are with potentially responsible parties who would not be responsible for a significant portion of such costs in any case. Settling with such parties early can simplify and expedite site negotiations. Allowing minor repsonsible parties to cash out also avoids the imposition of unnecessary negotiation or litigation costs on such parties.

III. EPA Cost Recovery Settlement Authority: New Subsection 122(h) of CERCLA

Section 121 of H.R. 2817, as reported by the Energy and Commerce Committee, establishes a new section 122 of CERCLA which authorizes EPA to enter into administrative settlement agreements with responsible parties for the clean-up of hazardous waste sites. The purpose of this settlement authority is to ensure expeditious clean-ups and to reduce the legal costs in accomplishing these clean-ups. However, this section does not provide comparable settlement authority for EPA claims under section 107 for the recovery of costs that EPA has incurred in cleaning up a site on its own under section 104.

The Judiciary Committee believes that the Federal government must be able expeditiously to resolve cost recovery disputes under CERCLA section 107 in order to replenish the Fund promptly and to minimize government and private legal costs. The government should also have the flexibility to use alternative forms of dispute resolution to reach such agreements, such as administrative negotiation and settlement or arbitration rather than only litigation.

For these reasons, the Judiciary Committee added to new subsection 122(h) to CERCLA. This new subsection gives EPA and other relevant agencies express authority to administratively settle certain claims of the United States for response costs and damages under section 107. The amendment also provides express authority to engage in arbitration of disputed claims under section 107. Confirming that EPA has such authority will enable the burden of non-complex cost recovery cases that are likely to settle to be shifted from the Department of Justice to EPA. It will also help to reduce the number of cases filed in federal courts and will foster the use of new methods of resolving Superfund cases. The Committee emphasizes that when potential settlements include claims for natural resource damages, the federal trustee for the resources in issue must be involved in the settlement process.

New subsection 122(h)(1) provides that claims in excess of $500,000 may be compromised only with the prior written approval of the Attorney General or his designee. This approval requirement for large settlements follows the general approach used in the Federal Claims Collection Act, 31 U.S.C. 2671. The $500,000 figure accounts for the scale of many response actions, particularly emergency removal actions that EPA and the Coast Guard perform on a regular basis. The Attorney General specifically retains his authority to approve settlements of claims greater than $500,000 because review and approval by the Justice Department will ensure that these large settlements do not adversely affect ongoing or potential litigation at a site. Such centralized review and oversight will also ensure that settlements of significant claims by diverse agencies and regional offices will be consistent nationally and over time. Finally, evaluating large settlement proposals involves the consideration of factors with which the Justice Department has had much experience, including the litigative risks of trying the case and the possible precedential value of the case.

New subsection 122(h)(3) provides, in conjunction with new subsection 122(h)(5), that the settlements or arbitrations will be binding absent some showing of misconduct or a mutual mistake by the parties to the settlement. New subsection 122(h)(4) provides that if a settling party fails to comply with the terms of the settlement, the Administrator or Secretary or other relevant department or agency head will request the Attorney General to enforce the settlement agreement in district court.

New subsection 122(h)(5) provides that parties who settle with EPA for past response costs are protected from the contribution claims of non-settling parties, whether or not the administrative settlement is entered as a judicially approved consent decree. If the plaintiff in a contribution action shows that the settlement was achieved through fraud or other misconduct, or a mutual mistake of fact between EPA and the settling party, the settlement will not provide immunity from contribution claims.

Amendment to Section 207: Citizens Suits

Eleven Federal environmental laws now contain citizens suits provisions. These laws include the Clean Air Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act (RCRA), the Noise Control Act, the Safe Drinking Water Act, the Endangered Species Act, the Deep Water Port Act, the Outercontinental Shelf Land Act, the Surface Mine Control and Reclamation Act, and the Marine Protection, Research, and Sanctuaries Act.

Section 207 of H.R. 2817, as reported by the Energy and Commerce Committee, added a new section 310 to CERCLA which would authorize citizens suits under Superfund. This provision would authorize citizens suits against persons alleged to be in violation of any requirement which is effective pursuant to the Act. It would also authorize suits against government officials who are alleged to have failed to perform mandatory duties under the Act. In the event of a suit under either provision, the court would be authorized to require compliance with the Act.

While supporting the approach of the Energy and Commerce Committee, the Judiciary Committee concluded that an additional provision is required to adequately protect citizens where a community is seriously threatened or actually harmed by the release of a hazardous substance. Therefore, the Committee adopted an amendment to new section 310 of CERCLA which provides for a third type of citizen suit: an action to abate an imminent and substantial endangerment to health or the environment. These suits will be available whenever an actual or threatened release of hazardous waste poses an imminent and substantial endangerment to health or the environment.

In 1983, this Committee considered the RCRA authorization legislation—know as the "Hazardous Waste Control and Enforcement Act of 1983" (H.R. 2867). Section 11 of that bill, which was within the jurisdiction of the Judiciary Committee, contained a subsection (f) (later subsection (d)) which proposed to authorize citizen suits under RCRA for the first time. Under the terms of H.R. 2876, which became public law, citizens were authorized to bring suits "against any person, including the United States and any other government instrumentality or agency . . . and any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility . . ." where their activities may present "an imminent and substantial endangerment to health or the environment." The Committee amendment to H.R. 2817 provides for the same type of action under Superfund.

One of the main reasons the Committee added this provision to CERCLA is because it is unclear whether citizens can use the citizen suits provision currently contained in RCRA (described above) to address all waste site threats. Each time a citizen currently brings a case under RCRA, the court has to decide whether the substance is a solid waste under RCRA criteria in order to allow the suit to proceed. Thus, the only way to ensure that citizens have protection from all hazardous substances, including those that are not RCRA "hazardous wastes", is to authorize citizens suits under CERCLA. With this amendment, plaintiffs and the courts will not have to waste time and resources in determining that a non-listed substance is a solid waste under RCRA. Citizens should be able to sue to protect themselves from dangerous chemicals regardless of whether EPA has formally listed the chemical under RCRA.

Another reason the Committee added this provision is because currently existing nuisance and trespass laws are inadequate to deal with hazardous waste sites. In most states, nuisance law allows only landowners to sue. In addition, nuisance law in all states can only provide monetary compensation for injury already suffered, whereas this provision authorizes suits for threatened releases with the result that citizens suits could *prevent* health risks to people from exposure to toxics. Trespass law is inadequate because it allows only landowners to sue, and each landowner can sue only to protect himself rather than the entire community. Also the landowner must meet the difficult burden of proving that hazardous substances have trespassed onto his property.

The Committee amendment carefully limits the type of releases regarding which citizens suits can be brought for imminent and substantial endangerment. Under new subsection 310(i), suits would be precluded as to any federally permitted release. Under new subsection 310(j)(2), suits would be precluded for workplace releases, engine exhausts, nuclear releases, and the normal application of fertilizer.

Under new subsection 310(k), suits would be precluded for the normal application of pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or for any application of a pesticide otherwise authorized under FIFRA. This provision recognizes that FIFRA, originally enacted as Public Law 95-51 and classified 7 U.S.C. 136 *et seq.*, specifically authorizes the use of pesticides in the following instances in addition to the uses for which they are registered: 7 U.S.C. 136c(c) authorizes experimental use permits; 7 U.S.C. 136p authorizes emergency use; 7 U.S.C. 136v(c)(1) authorizes use for a special local need; and 7 U.S.C. 136a(c)(1)(ii) and 136d(a)(1) authorized the use of accumulated stocks when the registration is cancelled or suspended.

The Committee emphasizes that allowing citizens to sue those responsible for imminent and substantial endangerment will not make it difficult for EPA to carry out orderly action on its priority sites. These suits will be against the responsible party, not EPA. As with any other citizen suit, the citizens must notify EPA 60 days prior to filing suit so that EPA will have the opportunity to take enforcement action against the endangerment. To ensure that these suits, as well as those brought under new subsection 310(a)(1)(A), will in no way interfere with government enforcement actions, new subsection 310(d)(2) precludes citizens from bringing suits under the entire section if EPA is diligently pursuing an administrative order or civil action against the parties responsible for the hazardous waste. A similar bar is established by new subsection 310(d)(3) if a State is diligently pursuing action against the endangerment. Only if EPA or the State chooses not to become involved can the citizens suit proceed. Thus the citizens suit would in no way burden EPA or divert EPA's resources from the priority sites or from ongoing enforcement activities. As modified, these bars apply to suits alleging violations of CERCLA as well as to those alleging an imminent and substantial endangerment.

The Committee emphasizes that the terms "diligently pursuing" and "diligently prosecuting", as applied to the type of activity by EPA or a State that bars citizens suits, mean that aggressive Federal or State enforcement action is underway regarding the subject of the suit. The purpose of these bars is to ensure that such enforcement actions will not be deterred by the diversion of resources that such suits might otherwise engender. The bars are also necessary to avoid the confusion or termination of settlement negotiations because EPA, a State, or potentially responsible parties face citizen suit litigation relative to the matters under negotiation. The basic concept is that the purpose of citizens suits is to augment, not duplicate, government enforcement efforts. Consequently, instances where EPA or a State are involved in good faith negotiations will be protected from the drain and disruption that might otherwise be created by citizens suits.

On the other hand, "diligent pursuit" *does* require a vigorous and active enforcement effort as to the subject of the suit. It certainly does not contemplate "intentions" or "plans" on the part of EPA or a State to address the matter at some time in the future. Moreover, EPA or State action must be capable of providing relief similar to that which courts can dispense in citizens suits. In other words, a necessary condition of a finding of diligent government action is the expenditure and commitment of resources by EPA or the State to actively address the subject of the suit.

The Judiciary Committee amendment to new section 310(c) of CERCLA states the type of relief that courts are authorized to grant in actions claiming an imminent and substantial endangerment: "to immediately restrain any person contributing to the endangerment . . . to order such person to take response actions as provided for under this Act". By this language, the Committee intends to ensure that courts will grant only that injunctive relief which is consistent with the kinds of response actions that EPA is authorized to take under CERCLA. The amendment will thus avoid the creation by the courts of response actions and remedies that vary widely from the actions selected or approved by EPA under the Act, and will lessen the necessity for EPA to intervene in these suits to ensure that these actions do not result in anomalous and potentially troublesome remedies. The amendment confirms that the cause of action for abatement of an imminent and substantial endangerment, like the one added to the Solid Waste Disposal Act in 1984, is designed solely to aid in the clean-up of hazardous waste sites.

The Committee notes that this type of relief is consistent with that available for other actions authorized by this section. These suits may also be brought for injunctive relief only, i.e., citizens may seek a restraining order against private parties and/or a mandamus order to require the EPA or other relevant agency to perform a mandatory duty under CERCLA. None of these actions are for money damages. They are actions directly related to the principal purpose of the Superfund law—i.e., to bring about quick identification and effective clean-up of dangerous hazardous waste sites.

The Committee also added to new subsection 310(h)(2) to CERCLA to provide a right to intervene in actions brought under section 310 to any person who "claims an interest relating to the subject of the actions and [who] is so situated that the disposition of the action may, as a practical matter, impair or impede the persons ability to protect that interest . . .".

This provision creates a statutory right for citizens who would be affected by actions brought under new section 310 to intervene in these actions. It is designed primarily to protect the interests of whose who own property in proximity to a Superfund site, and is similar to statutory intervention provisions contained in other federal statutes, including RCRA, the Toxic Substance Control Act, the Clean Air Act, and the Safer Drinking Water Act.

Without this provision, Rule 24 of the Federal Rules of Civil Procedure would govern the right of citizens to intervene in such cases. In order to succeed in a Rule 24 motion, a party has the burden of establishing that no other party to the suit, such as EPA or a state, adequately represents the moving party's interest. The case law that has been developed under Rule 24 creates a presumption of adequate representation by government agencies, which essentially can be overcome by the moving party only be demonstrating bad faith or malfeasance. That is a very difficult burden to meet. Citizens, under Rule 24, are thus forced to spend a substantial store of their resources merely in establishing their right to be in court. This obviously depletes the resources that they would otherwise have available to address the substance of their claim. This amendment would shift to the EPA or to the State the burden of establishing that it adequately represents the citizen's interest.

Given the very broad authority that courts have today to deny intervention motions, citizens with limited resources face almost insurmountable barriers to protecting their interests. This amendment, with ample precedent in the federal statutes mentioned above, would appropriately lower those barriers.

This new citizens suits provision, as amended by the Judiciary Committee, will assist in accomplishing the goals of CERCLA: the clean-up of hazardous waste sites. It provides important safeguards to protect against government inaction or violations of the Act. In view of the government's limited and overburdened enforcement authority, citizens suits are essential to assure compliance with the law.

Recommendation

COMMITTEE VOTE

(Rule XI, clause 2(l)(2)(B))

On October 8, 1985, a quorum being present, the Committee on the Judiciary favorably reported by voice vote H.R. 2817 with amendments.

OVERSIGHT STATEMENT

(Rule XI, clause 2(l)(3)(A))

The Committee on the Judiciary exercises its oversight responsibilities with reference to administrative law, judicial procedures and standards of review, federal causes of action, and criminal law and penalties. The Committee has determined that H.R. 2817 should be favorably reported as amended.

BUDGET STATEMENT

(Rule XI, clause 2(l)(3)(B))

The sections of H.R. 2817 within the jurisdiction of the Judiciary Committee do not directly provide budget authority nor do they involve new or increased tax expenditures contemplated by clause 2(l)(3)(B) of Rule XI.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI, clause 2(l)(3)(D))

No findings or recommendations of the Committee on Government Operations were received on H.R. 2817 as referred to in clause 2(l)(3)(D) of Rule XI.

INFLATIONARY IMPACT

(Rule XI, clause 2(l)(4))

In compliance with clause 2(l)(4) of Rule XI, it is stated that the committee recommendations will have no inflationary impact on prices and costs in the operation of the national economy.

COSTS

(Rule XIII, clause 7(a)(1))

The costs are those outlined in the cost estimate of the Congressional Budget Office included in this report.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 22, 1985.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2817, the Superfund Amendments Act, as ordered reported by the House Committee on the Judiciary, October 8, 1985. Several provisions in the bill could potentially result in additional costs to federal, state or local governments. However, because these provisions involve possible future legal actions, some of which may occur even without the enactment of this bill, the likely costs cannot be estimated.

The amended bill would authorize the EPA to indemnify its hazardous response action contractors against any liability arising from a contractor's performance unless gross negligence or intentional misconduct is involved. If claims were to arise from a contractor's performance, the agency would be responsible for the payment of any settlement or legal costs if it has entered into an indemnification agreement. As is often the case in liability suits, potential costs could be substantial. However, because this authority is discretionary and because the nature of future legal action is impossible to predict, we cannot estimate the potential exposure of the federal government.

Section 113 of the bill would provide for judicial review of the hazardous substance response actions undertaken or ordered to be undertaken by the EPA. In certain cases, courts would be authorized to award legal costs, some response costs and compensatory damages to an objecting party if the EPA's actions or orders are found to have been arbitrary or capricious. Sums awarded would not be paid from the Superfund. If this provision results in judgments against the agency and reimbursements that would not have otherwise occurred, federal outlays would be increased.

Finally, H.R. 2817 would create a new Section 310, "Citizen Suits," within the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The section would permit a private person to sue in federal courts any other person, including (with certain limitations) a governmental entity, for violations of the act or in conjunction with hazardous substance releases. Suits may also be brought against the EPA or other federal agencies for failure to perform non-discretionary duties

In the case of suits against federal, state, or local government agencies that own or operate hazardous waste sites, the court would have the authority to enforce CERCLA requirements and, where substantial and imminent endangerment is involved, to require any necessary action to abate a release. Complaints of nonperformance of duty against the EPA or other federal agencies could be remedied by ordering the agency to perform the act or duty involved.

Because it may be possible to obtain such remedies in a state court or through some other cause of action, it is uncertain whether Section 310 would have any net effect on federal, state, or local government expenditures. Moreover, to the extent that a court-ordered action has already been planned by the affected agency, the result may only be a change in the timing of outlays. Regardless of the outcome of such cases, the provision may increase the caseload of federal courts by either encouraging new suits or attracting plaintiffs who otherwise would have brought suit under some other cause of action in a state court. This could increase the costs of the federal judicial system and of the Department of Justice. The uncertainty surrounding such future events makes it impossible to estimate these costs.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

For the information of the Members, provisions of law affected by the Committee on the Judiciary's amendments to the bill are shown here as follows: existing law proposed to be omitted both by the Committee on Energy and Commerce and by the Committee on the Judiciary is enclosed in black brackets, new matter proposed to be inserted by both committees is printed in italic, new matter proposed to be inserted only by the Committee on Energy and Commerce is printed in italic linetype, new matter proposed to be inserted only by the Committee on the Judiciary is printed in boldface roman, and existing law in which no change is proposed is shown in roman.

The changes made to existing law as reported by the Committee on Energy and Commerce are shown on pages 143 through 248 of House Report 99-253, Part I, August 1, 1985.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

* * * * * * *

ABATEMENT OF ACTION

SEC. 106. (a) * * *

(b)*(1)* Any person [who willfully] *who, without sufficient cause, willfully* violates, or fails or refuse to comply with, any order of the [President] *Administrator* under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$25,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with section 2412 (a) and (d) of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages.

~~*(F) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.*~~

(F) In any action under section 113(i), if the remedial action conducted under an administrative order or consent decree is determined to be arbitrary and capricious or otherwise not in accordance with law, any person who has complied with the terms of any administrative order or consent decree issued under subsection (a) may petition the Administrator for reimbursement from the fund for the reasonable costs of such action, including interest. The Administrator shall grant such petition for all reasonable response costs incurred by the petitioner pursuant to the portions of the administrative order or consent decree found to be arbitrary and capricious or otherwise not in accordance with law.

(G) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.

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LIABILITY

SEC. 107. (a) * * *

* * * * * * *

(k) FEDERAL LIEN.—

(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) DURATION.—The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not be law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States distict court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of the Inter-

nal Revenue Code of 1954. ~~This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.~~

(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

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LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) * * *

* * * * * * *

~~(g) CONTRIBUTION.—~~

~~(1) CONTRIBUTION.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable to potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.~~

~~(2) SETTLEMENT.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.~~

~~(3) PERSONS NOT PARTIES TO SETTLEMENT.—Nothing in this subsection shall affect or modify in any way the rights of—~~

~~(A) the United States,~~

~~(B) a State, or~~

~~(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,~~

~~to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2). Any contribution action brought under this subsection shall be governed by Federal law. In any such action under this subsection for contribution the rights of a State and person referred to in subparagraph (C) shall be subordinated to the rights of the United States.~~

~~(h) STATUTE OF LIMITATIONS.—~~

~~(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6) under this Act, unless that action is commenced within 3 years after the later of the following—~~

~~(A) The date of the discovery of the loss.~~

~~(B) The date on which regulations are promulgated under section 301(c).~~

~~(2) ACTIONS FOR RECOVERY OF COSTS.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.~~

(g) CONTRIBUTION.—

(1) CONTRIBUTION.—Except as provided in paragraph (2), any person potentially liable or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable or potentially liable. In any such action in a court of the United States the Federal Rules of Civil Procedure shall apply. In any such contribution action in a court of the United States, the court may use its equitable powers to apportion costs among the liable parties, taking relevant equitable considerations into account. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in a judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the Secretary may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a reponse action or for some or all of the costs of such action in an administrative or judicially approved settlement may bring an action for contribution or indemnification against any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(h) STATUTE OF LIMITATIONS.—

(1) Actions for natural resource damages.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following—

(A) The date of the discovery of the loss.

(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the national priorities list, any federal facility identified under section 120, or any facility at which a remedial action is otherwise scheduled, an

action for damages must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities), but in no event may an action for damages with respect to such a facility be commenced before selection of the remedial action. The limitation in the preceding sentence on commencing an action before selection of the remedial action does not apply to actions filed on or before December 11, 1983.

(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107(a) must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

(B) for a remedial action, within 3 years after initiation of physical on-site construction of the remedial action, provided that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this suparagraph.

In any such initial action, the court shall enter a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs. A subsequent action or actions under section 107 for further response costs at the facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

* * * * * * *

(i) TIMING OF REVIEW.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a), in any action than one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

~~*(4) An action under section 310 of this Act alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.*~~

~~*(5) An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent degree which has been entered under section 106 and in which a potentially responsible person has made a commitment to undertake a remedial investi-*~~

~~*gation and feasibility study and to implement the remedial action decision of the Administrator following review.*~~

(4) An action under section 310 alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site. Such an action may be maintained during the course of construction and implementation of the remedial action, where the person bringing the action alleges that the specific remedial measures being taken are in violation of this Act.

(5) An action by the United States under section 106 for injunctive relief.

(6) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has made a commitment to undertake a remedial investigation and feasibility study and to perform or cause to be performed all of the judicially approved remedial action.

(7) A motion by a potentially responsible party to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which such potentially responsible party has agreed to perform or cause to be performed all of the judicially approved remedial action.

(8) A motion by a potentially responsible party who is a recipient of an administrative order under section 106 to review the Administrator's selection of the remedy, where the recipient of the order has, without admitting that the release in question constituted an imminent and substantial endangerment under section 106 and without admitting liability, agreed to the terms of the order except for the Administrator's selection of the remedy. In such cases, the order shall be entered in the District Court as a consent decree.

In ruling on motions under paragraphs (6), (7), and (8), the District Court shall act without delay and shall rule expeditiously. There shall be no right of appeal by any party from such ruling.

~~*(j) ADMINISTRATIVE RECORD.—*~~

~~*(1) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record.*~~

~~*(2) STANDARDS.—In considering such objections, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.*~~

~~*(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.*~~

~~*(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action would have been significantly changed had such errors not been made.*~~

(j) INTERVENTION.—In any action commenced under subsection (i), any person may intervene as a matter of right when such person claims a direct public health interest or a direct interest in the environment relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

~~*(k) PARTICIPATION PROCEDURES.—*~~

~~*(1) REGULATIONS.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, such regulations shall include procedures for providing each of the following, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—*~~

~~*(A) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.*~~

~~*(B) A reasonable opportunity to comment and provide information regarding the plan.*~~

~~*(C) An opportunity for a public meeting in the affected area.*~~

~~*(D) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures.*~~

~~*(E) Agency support for the basis and purpose of the selected action. The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.*~~

(k) JUDICIAL REVIEW.—

(1) IN GENERAL.—For purposes of judicial review under this section, the administrative record shall consist of (A) in the case of a removal action, the record developed under regulations issued pursuant to subsection (l)(2)(A), and (B) in the case of a remedial action, the record developed under subsection (l)(2)(B).

(2) LIMITATION.—In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. Objections and evidence which were not made a part of the administrative record may be considered by the court only if such objections and evidence were not reasonably available when the record was being developed.

(3) STANDARD.—In considering objections raised in any judicial action under section 106 or 107, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(4) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not

in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

(5) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(1) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

(1) ADMINISTRATIVE RECORD.—The Administrator shall establish an administrative record upon which the Administrator shall base the selection of a response action. The record shall consist of (A) in the case of a removal action, the record developed under regulations issued pursuant to paragraph (2)(A), and (B) in the case of a remedial action, the record developed under paragraph (2)(B). The administrative record shall be available to the public at or near the facility at issue. The Administrator also may place duplicates of the administrative record at any other location.

(2) PARTICIPATION PROCEDURES.—

(A) REMOVAL ACTION REGULATIONS.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the Administrator will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) REMEDIAL ACTION REQUIREMENTS.—The Administrator shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the Administrator will base the selection of remedial actions and on which judicial review of remedial actions will be based. The administrative record under this subparagraph shall include, at a minimum, the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the

second sentence of section 117(d). The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

(C) POTENTIALLY RESPONSIBLE PARTIES.—The Administrator shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability under this Act.

* * * * * * *

SEC. 117. PUBLIC PARTICIPATION.

(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate shall take both of the following actions—

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan, if any remedial action is taken, if any enforcement action under section 106 is taken, of if any settlement or consent decree under section 106 is entered into and if such, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum publication in a major local newspaper of general circulation. **In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.**

* * * * * * *

SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

(1) In general.—Notwithstanding the provisions of section 114, no person who is a response action contractor with respect to any release or threatened release of a hazardous substance or a pollutant or contaminant from a facility shall be liable under this title, under any other Federal law, under the law of any state or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.—Paragraph (1) shall not apply in the case of a release that was caused by conduct of the response action contractor which was negligent ~~*reckless, or*~~ **grossly negligent, or which constituted** *intentional misconduct.*

(3) Persons retained or hired.—Any person retained or hired by a response action contractor to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor.

(b) Savings Provisions.—

(1) Liability of other persons.—Nothing in this subsection shall affect the liability under this Act or under any other authority of Federal or State law of any person other than a response action contractor.

(2) Burden of plaintiff.—Nothing in this section shall affect the plaintiff's burden of establishing the liability under this title.

(c) Exception to Exemption.—The exemption provided under subsection (a) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if he had not carried out any actions referred to in subsection (d) of this section.

(d) Indemnification.—(1) The Administrator may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) arising out of the contractor's performance in carrying our response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) This subsection shall apply only with respect to a response action carried out under a written contract or agreement with—

(A) the Administrator;

(B) another Federal agency; or

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title.

(3) This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 11 of title 41 of such Code.

(e) Liability of Other Persons Unaffected.—Nothing in this section shall affect the liability under this title or under any

other Federal or State law of any person other than a response action contractor.

~~(d)~~ **(f)** *Definition.—For purposes of this section, a person is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility if such person is carrying out a written contract or agreement with—*

(1) the Administrator;

(2) any other Federal agency;

(3) a State; or

(4) any potentially responsible party, and defined by section 122;

to provide any response action under this Act or to provide any evaluation, planning, engineering, design, construction, equipment, or any ancillary services thereto for such facility. **The term "response action contractor" also includes any person retained or hired by a response action contractor (as defined in the preceding sentence) to provide any services relating to a response action.**

~~(e)~~ **(g)** *Competition.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under Memoranda of Understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractor and subcontractors.*

* * * * * * *

SEC. 132. SETTLEMENTS.

(a) EPA Authority To Enter Into Agreements.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility or vessel from which a release or substantial threat or release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person. **If the Administrator decides not to use the procedures in this section, the Administrator shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. The decision of the Administrator not to use the procedures in this section are not subject to judicial review.**

* * * * * * *

~~(c)~~ De Minimis Settlements.—~~Nothing in this Act shall be construed to prohibit the Administrator (in an action under section 106 or section 107 of~~

~~this Act) from reaching final settlements with, and granting releases from liability to, any potentially responsible party in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility—~~

~~(1) The amount of the hazardous substances contributed by that party to the facility.~~

~~(2) The toxic or other hazardous effects of the substances contributed by that party to the facility.~~

(g) **De Minimis Settlements.**—(1) Whenever practicable and in the public interest, as determined by the Administrator, the Administrator shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or section 107, if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the Administrator, the conditions in either of the following subparagraphs are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, or disposal of any hazardous substance.

(2) The Administrator shall provide a covenant not to sue with respect to the facility concerned, or grant a release from liability with respect to the facility concerned, to any party who has entered into a settlement under this subsection, unless such a covenant or release would be inconsistent with the public interest as determined under subsection (f).

(3) The Administrator shall reach any such settlement, grant any such covenant not to sue, or grant any such release from liability as soon as possible after the Administrator has available the information necessary to reach such a settlement, grant such a covenant, or grant such a release from liability.

(4) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The district court for the district in which the release or threatened release occurs may enforce such order.

(5) A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement that was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

(6) Nothing in this subsection shall be construed to affect the authority of the Administrator to reach settlements with other potentially responsible parties under this Act.

(h) EPA COST RECOVERY SETTLEMENT AUTHORITY.—(1) The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs and damages incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Any claim for costs and damages which in the aggregate is in excess of $500,000 (excluding interest) may be compromised only with the prior written approval of the Attorney General or his designee.

(2) A settlement under this subsection shall be final and conclusive as to the matters addressed in the settlement, unless the settlement was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact. No court shall have jurisdiction to review the settlement unless there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, other misconduct, or mutal mistake of fact.

(3) Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States Government under this section. After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection. An arbitration under this subsection shall be final and conclusive to the extent provided in paragraph (2).

(4) If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney Genaral to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(5) A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. This paragraph does not apply to a settlement which was achieved through fraud, misrepresentation, other misconduct by one of the parties to the settlement, or mutual mistake of fact.

~~(h)~~ (i) *Definition of Potentially Responsible Party.—As used in this section, the term potentially responsible party means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.*

* * * * * * *

TITLE III—MISCELLANEOUS PROVISIONS

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SEC. 310. CITIZENS SUITS.

(a) Authority To Bring Civil Actions.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

~~*(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement which has become effective pursuant to this Act; or*~~

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who—

(A) is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

(B) has contributed or who is contributing to the actual or threatened release of any hazardous substance from a facility if such release may present an imminent and substantial endangerment to health or the environment; or

(2) against—

(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

(b) Venue.—

~~*(1) Actions under subsection (a)(1).—Any action under paragraph (1) of subsection (a) shall be brought in the district court for the district in which the alleged violation occurred.*~~

(1) Actions under subsection (*a*)(1).—Any action under subsection (a)(1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action under subsection (a)(1)(B) shall be brought in the district court in which the release occurred.

(2) Action under subsection (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

~~*(c) Relief.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.*~~

(c) Relief.—The district court shall have jurisdiction in actions brought under subsection (a)(1)(A) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(1)(B) to immediately restrain any person contributing to the endangerment referred to in subsection (a)(1)(B), to order such person to take response action as provided for under this Act, or both. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

(d) Subsection (a)(1) Actions.—

(1) Notice.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the vilation or disposal—

(A) to the Administrator;

~~*(B) to the State in which the alleged violation occurs; and*~~

~~*(C) to any alleged violator.*~~

~~*Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.*~~

~~*(2) Actions under paragraph (1).—No action may be commenced under subsection (a)(1) with respect to any violation referred to in such subparagraph if the Administrator has commenced and is diligently pursuing an action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.*~~

(B) to the State in which the alleged violation or release occurs; and

(C) to any alleged violator or person who contributed or is contributing to the release.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation

(2) Actions under paragraph (1).—No action may be commenced under subsection (a)(1) if the Administrator—

(A) has commenced and is diligently—

(i) pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement,

(ii) pursuing an administrative order or civil action to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, or

(iii) prosecuting an action in court under section 106 of this Act, or under section 7003 of the Solid Waste Disposal Act, with respect to such violation or endangerment;

(B) is actually engaging in a removal action under section 104 with respect to such violation or endangerment;

(C) is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or has completed a remedial investigation and feasibility study and is diligently proceeding with a response action with respect to such violation or endangerment; or

(D) has obtained a court order (including a consent decree) under section 106 of this Act or under section 7003 of the Solid Waste Disposal Act under which any responsible party—

(i) is diligently conducting a removal action,

(ii) is diligently proceeding with a remedial investigation and feasibility study, or

(iii) has completed a remedial investigation and feasibility study and is diligently proceeding with a response action,

with respect to such violation or endangerment.

In the case of an administrative order referred to in subparagraph (A), action under subsection (a)(1)(B) are prohibited only as to the scope and duration of such administrative order.

(3) ACTIONS UNDER PARAGRAPH (1)(B); STATE ACTIVITY.—No action may be commenced by any person other than the State under subsection (a)(1)(B) if, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, the State—

(A) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) with respect to such endangerment;

(B) is actually engaging in a removal action under section 104 with respect to such endangerment; or

(C) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104(b) of this Act and is diligently proceeding with a remedial action under this Act.

(4) STANDING.—For purposes of this section, only a person who has an interest which is or may be adversely affected may bring an action under subsection (a)(1)(B).

(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulations.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any

Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

~~(h) INTERVENTION.—In any action under this section the United States, if not a party, may intervene as a matter of right.~~

(h) INTERVENTION.—(1) In any action under this section the United States, if not a party, may intervene as a matter of right.

(2) In any action under this section, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

~~(i) DEFINITIONS.—The terms used in this section shall have the same meaning as when used in title I.~~

(i) FEDERALLY PERMITTED RELEASE.—It shall be a defense in an action under subsection (a)(1)(B) if the defendant establishes that the release referred to in such subsection (a)(1)(B) was a federally permitted release as defined in section 101(10) (except that for purposes of this section, the phrase "permit application" in subparagraph (C) shall not apply).

(j) DEFINITIONS.—As used in this section—

(1) IN GENERAL.—The terms used in this section shall have the same meaning as when used in title I, except as specifically provided in this subsection.

(2) RELEASE.—The term "release" means the discharge, deposit, injection, dumping, spilling, leaking, treating, storing, or placing of any hazardous substance into or on any land or water, except that such term shall not include any activity referred to in subparagraph (A), (B), (C) or (D) of section 101(22).

(k) PESTICIDES.—No action may be brought under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under, or whose application is otherwise authorized under, the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, (1) for damages, injury, or loss resulting from a release of any hazardous substance or (2) for removal or remedial action or (3) for the costs of removal or remedial action for such hazardous substance.

* * * * * * *

ADDITIONAL VIEWS OF MESSRS. FISH, MOORHEAD, HYDE, KINDNESS, LUNGREN, SENSENBRENNER, McCOLLUM, SHAW, GEKAS, DeWINE, DANNEMEYER, BROWN, SWINDALL, AND COBLE ON H.R. 2817

It is our understanding that when H.R. 2817 is considered on the floor of the House of Representatives, that Congressman Frank intends to offer an amendment which would create a Federal cause of action under the Superfund law. Such a provision would permit individuals to sue in Federal courts for personal injury and property damage resulting from exposure to toxic substances. While Congressman Frank chose not offer an amendment on this subject in the Judiciary Committee, the text of his draft proposal was circulated prior to the Committee markup.

These views address both the conceptual problems presented by a Federal cause of action in Superfund, as well as the specific flaws of that draft amendment. While the Frank amendment circulated at the full Committee was not identical to the language rejected by the full House of Representatives last year (208–200 record vote), its fundamental defects remain the same. In fact, these defects have been amplified. We are strongly opposed to a Federal cause of action amendment and will oppose such an amendment on the House floor.

To begin, the purpose of the Superfund law is to provide a Federal response to the urgent need to *clean up* existing hazardous waste sites. H.R. 2817 would extend the authorization of the existing Superfund program and contains remedial amendments which, again, are appropriately focused on cleanup activities. This House has consistently rejected expanding the Superfund statute to deal with legal rights aimed at compensation for damages arising out of injuries caused by the toxic substances involved. This approach is, plain and simple, a matter of selecting appropriate and achievable national priorities.

As the *Washington Post* stated in a still timely editorial published in August, 1984—"[T]he Superfund legislation ought not to be diverted into the very separate question of dealing with environmental health damages . . ." That same editorial noted that a commission ("Superfund Study Group") created by Section 301(e) of the original Superfund law, made up of well-known legal practitioners, specifically chose *not* to recommend the creation of a Federal cause of action in the Superfund statute. Among the organizations that were represented in the Section 301(e) Study Group were the American Bar Association, the Association of Trial Lawyers of America, the American Law Institute, and the National Association of State Attorneys General. Their report determined that there was "no need" for such a Federal civil liability law. They emphasized that existing, appropriate remedies are available under state law and the state courts are the proper forum for such actions.

The language of the draft Frank amendment, circulated prior to Judiciary Committee consideration, contains an extremely weak causal relationship between the actual disposal of the hazardous substance, the resulting exposure, and the asserted injury caused. Under the language of that amendment, a business—be it large or small—that has taken every reasonable effort to dispose of a hazardous substance in a responsible manner, nevertheless would remain potentially liable for *all* the injury that may result from any disposal of any generator at the site—past, present or future. Furthermore, liability under the Frank amendment would be absolute as well as joint and several. A small business conceivably could be responsible for less than one percent of the hazardous waste at a particular site and, nevertheless, be made liable for up to 100% of the damages.

Additionally, the defenses available to the generator or the transporter of a hazardous waste, or the operator of a hazardous waste site, are also extremely limited. In fact, the language in the draft amendment may mean that even if the individual has not contributed *any* of the hazardous substance to a particular site which is asserted to have caused the injury, he still may have *no legal defense available*. The language of the amendment stated that if a contract for disposal at a particular site exists—then there is no defense.

The proposed amendment would authorize a new cause of action for damages in Federal district courts—with no diversity requirements and no requirement with respect to a minimum amount in controversy. The amendment further contains a liberal attorneys fee provision that could only result in encouraging plaintiffs to choose Federal courts as their forum, instead of proceeding with their existing, traditional State court remedies. Our Committee has received no data regarding the impact that these suits would have on Federal court caseloads, but most authorities are concerned that it would be substantial. Further, liability is retroactive for a ten-year period dating back from the date of enactment. This means that an individual would be able to sue asserting damages resulting from hazardous waste substances going back to 1975. This retroactive liability is particularly difficult to defend given the fact that the Superfund statute Congress is extending did not even exist until 1980.

The proposed Frank amendment would also disregard and bypass the existing Federal Rules of Evidence, by making certain toxicological and other studies admissible in instances where they would not now be admissible in a Federal court. Section 508 of the amendment would also codify a "discovery rule" for this new Federal cause of action. Under its terms, an individual would be able to bring suit within three years after discovering that the injury or illness in question was caused by a particular hazardous substance. The effect of applying an open-ended discovery rule and greatly nullifying the statute of limitations principle has extremely serious and negative implications regarding the ability of businesses—and especially small businesses—to obtain the necessary personal injury liability insurance.

This amendment also contained three new sections that were not present in the Federal cause of action proposal, rejected last year by the full House of Representatives. All three of these new sections add new arguments for defeating this proposal. Section 511 of the amendment totally disregarded the legal principle of *res judicata,* allowing an individual plaintiff to sue more than once on the same claim. The language of Section 511 would even permit a plaintiff to sue the *same defendant* more than once under essentially the same cause of action. In addition, Section 512 disregards the current requirements in Rule 23 of the Federal Rules of Civil Procedure with respect to class actions while Section 513 would specifically authorize the assessment of punitive damages in these cases. (This was implied in last year's language but not so forthrightly stated.)

We are all personally and deeply committed to a strong and effective Superfund law. H.R. 2817, as amended by the Judiciary Committee, would authorize a total of $10 billion over the next five years and would allow for an effective, efficient cleanup program to proceed.

However, we believe it would be extremely unwise for the House of Representatives to approve this defective and misplaced concept. Aside from its complete lack of balance and fairness for one side of such potential litigation (i.e., the defendants)—this amendment should be rejected because it would interfere with and divert the attention of the EPA, state and local governments, and the private sector from the fundamental purpose of this law—prompt cleanup. The American people deserve a quick, efficient and final cleanup of hazardous waste sites. A Federal cause of action amendment such as that proposed by Congressman Frank simply will not serve that goal.

HAMILTON FISH, Jr.
CARLOS J. MOORHEAD.
HENRY J. HYDE.
THOMAS N. KINDNESS.
F. JAMES SENSENBRENNER, Jr.
BILL MCCOLLUM.
GEORGE W. GEKAS.
MICHAEL DEWINE.
BILL DANNEMEYER.
HANK BROWN.
PATRICK L. SWINDALL.
HOWARD COBLE.
E. CLAY SHAW, Jr.
DANIEL E. LUNGREN.

ADDITIONAL VIEWS OF MR. BROWN

As it is presently written, H.R. 2817 makes a small business potentially liable for all the cleanup costs at a disposal site, even though it has done everything legally and technologically possible to dispose of its waste properly. The resulting potential liability can run into the hundreds of millions of dollars and is virtually uninsurable. Attorneys' fees alone can bankrupt a small business trying to defend itself against this liability.

It should be possible for a small business that generates small quantities of waste of low toxicity, if it follows all EPA rules and deposits its waste at an EPA-approved facility, to be relieved of further liability. This problem can be solved as state-of-the-art disposal facilities, approved and monitored by the Environmental Protection Agency, become available. H.R. 2817 should be amended to relieve small generators who use these facilities of further liability.

An amendment which addresses these problems would not only encourage accelerated compliance with the new standards put forth under the 1984 RCRA amendments, but also provide much needed relief for the thousands of small businesses who face ruinous liability and litigation costs because of their totally legal disposal of hazardous waste. These small businesses are not "midnight dumpers". Rather, they are honest, law-abiding businesses that simply want to dispose of the wastes associated with their day-today operations. Such businesses include gasoline stations, auto body repair shops, dry cleaners, hospitals, small furniture manufacturers, printing shops, painting and/or construction contractors, car washes, bowling alleys, retail stores, colleges and universities.

This entire problem arises within the context of the current liability scheme of CERCLA, which makes waste generators pay for cleanup of such sites, regardless of their fault. The small generator can conceivably to held liable for all of the cleanup costs even though it contributed only a portion of the waste in the site; provided the harm is found otherwise to be indivisible. This will happen without regard to the fact that the generator acted in good faith, was in compliance with federal law, paid a significant sum for the disposal, and exercised absolutely no control over the operation of the hazardous waste management facility in which its hazardous waste came to rest. This is because liability under Superfund has been held to be retroactive, strict, joint and several, with little causal nexus requirement. EPA need not show a causal relationship between the release of the hazardous substances to be cleaned up and the materials the small generator contributed to the site. The fundamental unfairness of this open-ended liability scheme is exacerbated by the unavailability of insurance for these risks. A prudent small businessman cannot even plan for this eventuality.

It may be small generators would not in fact be held liable for the entire cost of any potential cleanup. This is a matter of prosecutorial discretion on the part of the government. However, the legal costs involved for a small business in representing itself are often staggering and could well exceed the amount of cleanup liability any such business might have for the site. Equally important, small business wants and deserves greater certainty with regard to its liability under CERCLA.

EPA estimates that there are 175,000 small quantity generators, According to an EPA study, all these small generators combined produce about 3/10ths of 1 percent of all the hazardous waste generated. The grocery stores, body shops, paint stores, car washes, colleges and universities are not the source of our environmental problems and will be less so if they can be encouraged to use safe, modern disposal sites. The EPA would be able to focus its enforcement activities against major polluters, who are responsible for over 99 percent of the hazardous waste.

Although the Judiciary Committee made some progress in addressing these concerns by adopting stronger de minimis settlement policy language, the fact still remains that it is a discretionary policy. There is little evidence that EPA has used its existing settlement authority to provide relief to small businesses caught in this liability nightmare.

Furthermore, this immeasureable and unending liability presents immediate practical problems for small business. Financial institutions are extremely wary of lending capital for operations when the borrower may or may not be subject to huge liabilities created by the legal disposal of hazardous waste. The impact of this ripples through the economy as small business finds itself unable to borrow needed capital for expansion and investment due to the contingent liabilities generated under the CERCLA liability system.

No system of liability should be such that it actively discourages economic growth and job creation.

An additional defense could make liability under CERCLA imminently more fair. Generators of wastes would remain liable for cleanup while the wastes are in their possession and under their control. When generators transfer control, in full compliance with the extensive federal regulations designed to protect human health and the environment, it is only fair that their potential liability for cleanup—and the attendant legal costs—cease. Such an amendment would not affect liability under state law for bodily injury or property damage claims by other parties.

Such an amendment would also remove an impediment to the insurability of generators for their pollution exposures. By cutting off generator liability at locations not under their control, the risks associated with the operations of the generator can be more readily underwritten. Under the present system, the insurer must plan for the possibility that the generator would be held liable for the entire future cleanup of a leaking RCRA site. The small generator could become liable for wastes unrelated to its operations and over which it could not have exercised any loss prevention measures.

Most small generators lack the money and expertise to institute on-site disposal methods. They are forced, essentially, to transport their wastes off site regardless of the status of liability. The imposition of retroactive, strict, joint and several liability for small businesses who have placed their wastes in RCRA permitted facilities, ironically creates a strong inducement to improper behavior. Any small business that deposits its waste at a facility requiring waste to be manifested is documenting its own liability. It is, in effect, creating evidence that can be used against it in the future. This creates a powerful disincentive for disposing of waste in EPA-approved facilities. Allowing small generators a defense against liability would remove this disincentive and encourage environmentally sound disposal. In addition, it would provide further incentive for owners and operators of disposal facilities to upgrade their sites to obtain final permits under RCRA. In this way, environmental laws can be made both more fair and more effective.

HANK BROWN.

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99TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 99-253
1st Session } { Part 4

SUPERFUND AMENDMENTS OF 1985

OCTOBER 31, 1985.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

SEPARATE AND DISSENTING VIEWS

[To accompany H.R. 2817 which on August 1, 1985, titles I and II, except for section 206, was subsequently referred to the Committee on Merchant Marine and Fisheries]

[Including cost estimates of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred titles I and II, except for section 206, of the bill (H.R. 2817) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, after the item in the table of contents relating to section 406 insert the following:

TITLE V—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 500. Short title.

SUBTITLE A—OIL POLLUTION LIABILITY AND COMPENSATION

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Sec. 568. Civil penalty.
Sec. 569. Waiver of sovereign immunity.
Sec. 570. Rules and regulations.
Sec. 571. Definitions.

On page 6, line 22, strike out " '102 of this title' " and insert in lieu thereof " 'a federally permitted release,' the third place they appear".

Page 13, line 20, strike out "facility" and insert in lieu thereof "vessel, facility".

Page 13, line 22, strike out "facility" and insert in lieu thereof "vessel, facility".

Page 14, line 6, strike out "facility" and insert in lieu thereof "vessel, facility".

Page 14, line 20, strike out "facility" and insert in lieu thereof "vessel or facility".

Page 14, line 23, strike out "facility" and insert in lieu thereof "vessel or facility".

Page 15, line 3, strike out "facility" and insert in lieu thereof "vessel, facility".

On page 20, after line 18, add the following new subsection:

> (n) Coordinating of Investigations.—Section 104(b) of CERCLA is amended by inserting "(1)" after "(b)" and by adding the following new paragraph at the end:
>
> "(2) The Administrator shall promptly notify the appropriate Federal and State natural resource trustees of potential damage to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

On page 23, delete line 10, and insert in lieu thereof the following:

> lowing after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential".

On page 26, line 19, strike out "facility" and insert in lieu thereof "vessel, facility,".

Page 26 line 23 insert "(1)" after ".—".

On page 27, strike out lines 5 through 16 and insert in lieu thereof the following:

> (A) FEDERAL.—Each Federal agency designated as a natural resource trustee under the National Contingency Plan published under section 105 of this Act shall assess damages for injury to, destruction of, or loss of natural resources under its trusteeship resulting from a release of hazardous substances for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, and may, upon request of and reimbursement from a State, assess damages for those natural resources under the State's trusteeship.

Page 28, after line 9, insert the following:

> (2) Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the Administrator, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources.".

Page 28, line 15, strike out "new subsection" and insert in lieu thereof "new subsections".

Page 28, line 20, after "section" insert the following: "(other than the owner or operator of a vessel under paragraph (1) of subsection (a))".

Page 30, line 18, strike out the quotation marks and the final period.

Page 30, after line 18, insert the following:

> (1) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found.

Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

On page 30, after line 18, insert the following new subsection:

(g) TECHNICAL AMENDMENT.—Section 107(a) of CERCLA is amended by adjusting the left hand margin of the text of such subsection following "by such person," the second time it appears so that there is no indentation of such text through "for—" and so that the text of the subparagraphs following "for—" is aligned with paragraphs (1) through (4).

On page 31, line 1, strike out "section" and insert in lieu thereof "subsection".

On page 31, strike out lines 9 through 24 and insert in lieu thereof the following:

(c) DIRECT ACTION.—

(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defense which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) RELEASE FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defense which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defense which would have been available to the guarantor if an action had been brought against the guarantor by such person.

On page 32, line 2, after "facility" insert "or vessel".

On page 38, strike out lines 23 through 25 and replace with the following:

(1) In subsection (b)—

(A) strike out "for injury to, or destruction or loss of, natural resoures, including cost for damage assessment" and replace it with "for the cost of damage assessment relating to injury to, destruction or loss of, natural resources";

(B) strike out "for natural resources" wherever it appears and replace it with "relating to natural resources".

On page 39, line 1, strike out "paragraph (1) and (2)" and replace it with "paragraph (2)".

On page 45, line 12, strike out "3" and insert in lieu thereof "6".

Page 52, line 16, insert "(a)" before "Section".

Page 52, after line 21, insert the following:

(b) Section 105(g)(5) of the Marine Protection, Research and Sanctuaries Act of 1982 is amended by striking out "The injuctive relief provided by this subsection shall not" and inserting in lieu thereof "Nothing in this Act, including the injunctive relief provided by this subsection, shall".

On page 53, line 21, strike out the second "and".

On page 53, line 23, after the comma insert "and".

On page 53, after line 23, insert the following:

(6) the Secretary of Transportation,

On page 84, line 8, strike out "facility" and insert in lieu thereof "vessel or facility".

On page 85, line 19, strike out "facility" and insert in lieu thereof "vessel or facility".

On page 86, line 3, strike out "facility" and insert in lieu thereof "vessel or facility".

On page 98, strike out lines 16–19 and insert in lieu thereof the following:

shall consider other relevant factors, including any water quality criteria under the Federal Water Pollution Control Act and any tolerance levels established under the Federal Food, Drug and Cosmetic Act, which are applicable to that hazardous substance or pollutant or contaminant.

Page 101, after line 8, insert the following:

(g) LIMITATION ON WAIVERS.—No waiver may be granted by the Administrator under subsection (f) for any facility—

(1) at which a release has caused damages to natural resources, compensation for which is sought by the United States Government pursuant to secti[illegible]07(f) through a claim presented prior to January [illegible] 1984; and

(2) which has been designated by a State pursuant to section 105(a)(8)(B) as being the facility that presents the greatest danger to public health or welfare or the environment within that State;

unless the Governor of that State has agreed in writing, to the terms and conditions of such a waiver.

Redesignate succeeding sections accordingly.

On page 106, line 21, strike out "or vessel".

On page 115, line 19, strike out the quotation marks and the period.

On page 115, after line 19, add the following new subsection:

(j) Section Not Applicable to Vessels.—The provisions of this section shall not apply to a release from a vessel.

Page 115, after line 11, insert the following:

(h) Natural Resources.—

(1) Notification of trustee.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the Administrator shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotitions.

(2) Release from liability.—An agreement under this section may grant a release from liability to the United States under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release of threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such release from liability. The Federal natural resource trustee may agree to such release from liability if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

Page 115, line 12, strike out "(h)" and insert in lieu thereof "(i)".

Page 121, after line 2, insert the following:

SEC. 125. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) Definition.—Section 101 of CERCLA is amended by adding at the end the following new paragraph:

(33) "incineration vessel" means any vessel which carriers hazardous substances for the purpose of incineration of such substances, during any period when such substances or residues of such substances are on board the vessel.

(b) Liability.—Section 107 of CERCLA is amended—

(1) in subsection (a)(3) by inserting "or incineration vessel" after "facility";

(2) in subsection (a)(4) by inserting ", incineration vessels" after "facilities";

(3) in subparagraph (A) of subsection (c)(1) by inserting ", other than an incineration vessel," after "vessel";

(4) in subparagraph (B) of subsection (c)(1) by inserting "other than an incineration vessel," after "other vessel,"; and

(5) in subparagraph (D) of subsection (c)(1) by inserting "any incineration vessel or for" before "any facility".

(c) FINANCIAL RESPONSIBILITY.—Section 108(a) of CERCLA is amended—

(1) in paragraph (1) by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out "paragraph (1) of" in paragraphs (3) and (4), as so redesignated; and

(3) by inserting after paragraph (1) the following new paragraph:

(2) In addition to the financial responsibility required by paragraph (1) of this subsection, the Administrator may require additional evidence of financial responsibility for incineration vessels in such amounts as the Administrator deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and by any other factors deemed relevant.

Conform to the table of contents.

On page 123, lines 14-18, strike Section 202, and redesignate succeeding subsections accordingly.

On page 192, after line 24 insert the following new title:

TITLE V—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 500. SHORT TITLE.

This title may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

Subtitle A—Oil Pollution Liability and Compensation

SEC. 501. DEFINITIONS.

For purposes of this subtitle, the term—

(1) "Corporation" means the Marine Oil Pollution Insurance Corporation established by section 521;

(2) "claim" means a demand in writing for a sum certain;

(3) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(4) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(5) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the Outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(6) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(7) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(8) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(9) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(10) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(11) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(12) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(13) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(14) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15) "navigable waters" means the waters of the United States, including the territorial sea;

(16) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(17) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(18) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(19) "outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(20) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(21) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(22) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(23) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(24) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(25) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(26) "Secretary" means the Secretary of Transportation;

(27) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 502. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this subtitle shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and subtitle D.

SEC. 503. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 504(c), or

(ii) he is entitled to a limitation of liability under section 504(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 504(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 504(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 501(17) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 501(17) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 501(17) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 501(17), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 501(17)(B)(iv) or 501(17)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 501(17).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 506, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 504. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 501(24)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 503.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this subtitle.

(B) To the extent that damages for which claims may be asserted under section 503 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 503.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) **Exceptions.**—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) **Report.**—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) **Defenses to Liability.**—

(1) **Complete defenses.**—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) **Partial defenses.**—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) **Liability of Corporation.**—

(1) **General rule.**—Except as provided in subtitle B, the Corporation shall be liable for damages for which claims may be asserted under section 503 and for which claims are presented under this subtitle, to the extent that the damages are not otherwise compensated.

(2) **Defenses to liability.**—Except for the removal costs specified in section 501(24)(A), there shall be no liability under paragraph (1)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) Liability for Interest.—

(1) General rule.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 503 for the period described in paragraph (2).

(2) Period for which interest is owed.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 506, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) Rate of interest.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) Relationship to liability limits.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 503 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 505(e).

(f) Agreements.—

(1) Liability not transferable.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) Indemnification agreements.—Nothing in this title shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) Relationship to Other Causes of Action.—Nothing in this subtitle shall bar a cause of action that a responsible party subject to liability under this section or a guardence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.— If a responsible party or guarantor fails to inform the Corporation, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Corporation. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Corporation shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under antor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law relating to liability or the limitation thereof, this section supersedes such other law.

SEC. 505. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a nonself-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 504 of this subtitle to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 504. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 504. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this subtitle. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.— If a responsible party or guarantor fails to inform the Corporation, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Corporation. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Corporation shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE CORPORATION.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Corporation shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Corporation.

SEC. 507. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 506(a).

(b) PRESENTATION TO CORPORATION.—Claims may be presented to the Corporation—

(1) where the Corporation has advertised or otherwise notified claimants in accordance with section 506(c);

(2) by a responsible party who may assert a claim under section 503(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 506(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Corporation. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 504 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Corporation.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Corporation under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Corporation. The Corporation may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) Procedures.—The Corporation shall establish procedures and standards for the prompt appraisal and settlement of claims against the Corporation, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) Use of Private Organizations and Federal Personnel.—The Corporation may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Corporation and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Corporation may use Federal personnel, on a reimbursable basis, to process claims against the Corporation.

(h) Judicial Review.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Corporation with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 509 and shall be the exclusive judicial remedy with respect to such final determination of the Corporation. Such an action shall be filed not later than thirty days after the Corporation issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 509(b).

(i) Actions Against Responsible Party or Guarantor.—

(1) Service of pleadings on corporation.—In any action brought under this subtitle against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Corporation at the same time those pleadings are served upon the opposing parties.

(2) Intervention of corporation.—The Corporation may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) Admission of liability.—In any action to which the Corporation is a party, if the responsible party or his guarantor admits liability under this subtitle, the Corporation shall be dismissed therefrom to the extent of the admitted liability.

(4) Effect of judgment.—If the Corporation has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Corporation shall be bound by any judgment

entered therein, whether or not the Corporation was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Corporation as required by paragraph (1), the plaintiff shall not recover from the Corporation any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Corporation as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 504 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Corporation as required in paragraph (1), the Corporation may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Corporation has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Corporation must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Corporation failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Corporation in any case brought under this subtitle. When the Corporation does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Corporation the plaintiff may join any responsible party or his guarantor, and the Corporation may implead any person, who is or may be liable to the Corporation.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this subtitle, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Corporation as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 503, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 508. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Corporation, who compensates any claimant for an economic loss compensable under section 503 shall be subrogated to all rights, claims, and causes of action which that claimant has under this subtitle.

(b) RECOVERY BY CORPORATION.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Corporation has compensated a claimant for a claim presented to the Corporation under section 507(b)(1) or 507(c)(1), the Corporation shall recover under subsection (a)—

(A) the amount the Corporation has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Corporation or the responsible party or guarantor and ending on the date on which the Corporation is paid by the responsible party or guarantor, except that if the Corporation offered to the claimant the amount finally paid by the Corporation to the claimant in satisfaction of the claim against the Corporation the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Corporation made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Corporation by reason of the claim of the claimant against the Corporation and by reason of the claim of the Corporation against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY CORPORATION EXCEEDS OFFER BY RESPONSIBLE PARTY.—In a case in which the Corporation has compensated a claimant for a claim presented to the Corporation under section 507(c)(2) where the amount the Corporation has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Corporation shall recover under subsection (a)—

(A) the amount the Corporation has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Corporation, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Corporation by reason of the claim of the Corporation against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF CORPORATION DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Corporation has compensated a claimant for a claim presented to the Corporation under section 507(c)(2) where the amount the Corpora-

tion has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Corporation shall recover under subsection (a)—

(A) the amount the Corporation has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 506, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Corporation against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Corporation is paid, inclusive, except that if the responsible party or guarantor offers to the Corporation the amount finally paid to the Corporation in satisfaction of the claim of the Corporation, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Corporation accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 504(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Corporation shall pay over to the claimant that portion of any interest the Corporation recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Corporation or the responsible party or guarantor to the date upon which the claimant was paid by the Corporation, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Corporation is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 505(e).

SEC. 509. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this subtitle and subtitles B and C, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this title, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Corporation resides in the District of Columbia.

SEC. 510. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this subtitle,

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 503(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by such statute as those limits exist on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this subtitle.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this title shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY CORPORATION.—Nothing in subsection (a) shall prohibit an action by the Corporation under any other provision of law to recover compensation paid under this subtitle.

SEC. 511. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 505 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this title.

Subtitle B—Marine Oil Pollution Insurance Corporation and Compensation Fund

SEC. 521. MARINE OIL POLLUTION INSURANCE CORPORATION.

(a) Establishment.—The Marine Oil Pollution Insurance Corporation is established, subject to the direction and supervision of the Secretary of Transportation, as a wholly owned Government corporation. The Corporation—

(1) shall have succession in its corporate name; and

(2) shall be held to be an inhabitant and resident of the District of Columbia within the meaning of the laws of the United States relating to venue of civil suits.

(b) Management.—The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of seven years and who shall report directly to the Secretary of Transportation. Any Administrator appointed to fill a vacancy in that position before the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of that term.

(c) General Powers.—For the purpose of carrying out its functions under this title, the Corporation—

(1) may adopt and use a corporate seal, which shall be judicially noticed;

(2) may sue and be sued in its corporate name;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

(4) may make and carry out contracts or agreements necessary to the conduct of its business;

(5) may appoint and fix the compensation, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, of officers and employees necessary for the conduct of its business (without regard to any administratively imposed limits on per-

sonnel), define their authority and duties, and delegate to them such of the powers vested in the Corporation as the Administrator may decide;

(6) may obtain the services and fix the compensation of experts and consultants;

(7) may acquire, by purchase, lease, condemnation, or donation, such real and personal property, or any interest therein, and may sell, lease, or otherwise dispose of such real and personal property, as the Administrator considers necessary for the conduct of its business;

(8) may use the United States mails in the same manner as executive departments of the Government;

(9) shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to Government corporations; and

(10) may exercise all other lawful powers necessary to carry out the functions of the Corporation under this title.

(d) Annual Report.—The Corporation shall report annually to the Secretary on the activities of the Corporation during the preceding year. The Corporation shall include in any such report any recommendations for legislative changes needed for the Corporation to carry out the purposes of this title.

SEC. 522. MARINE OIL POLLUTION COMPENSATION FUND.

(a) Establishment.—The Marine Oil Pollution Compensation Fund is established and shall be held and administered by the Marine Oil Pollution Insurance Corporation.

(b) Composition of the Fund.—There shall be deposited in the Fund—

(1) premiums paid to the Corporation under section 523;

(2) amounts recovered, collected, or received on behalf of the Fund under subtitle A;

(3) amounts transferred to the Fund under sections 542(d) and 542(e);

(4) income earned on investments under subsection (d); and

(5) amounts borrowed under section 524(d).

(c) Purposes for Which Fund is Available.—The Fund shall be available for purposes of—

(1) the immediate payment of removal costs described in section 501(24)(A) and of reasonable costs incurred by the President or the Governor of a State as trustee under section 503(a)(3) in assessing damaged natural resources and preparing a restoration and acquisition plan with respect to the damaged natural resources;

(2) the payment of claims under subtitle A for damage which is not otherwise compensated;

(3) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in that section);

(4) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution;

(5) the payment of costs of administration of this title; and

(6) the payment of contributions to the International Fund in accordance with section 564.

(d) INVESTMENT.—The Corporation shall invest such portion of the Fund as is not, in the judgment of the Administrator, required to meet current withdrawals. Such investments shall be in obligations of the United States and obligations guaranteed as to principal and interest by the United States, with maturities suitable for the needs of the Corporation and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 percent. Except as provided in subsection (e), the income on such investments shall be credited to and form a part of the Fund. The Corporation shall not sell investments in excess of $100,000,000 at one time without the approval of the Secretary and the Secretary of the Treasury. The Secretary of the Treasury may waive the requirement for approval under this subsection for any period of time or under any conditions as the Secretary of the Treasury may decide.

(e) REBATE.—Whenever the amount in the Fund (including the value of obligations held under subsection (d)) exceeds $300,000,000, the amount of any income from such obligations shall be rebated to the owners of oil with respect to which premiums were first paid under section 523 and with respect to which a rebate has not previously been made under this subsection. Payment of rebates required by the preceding sentence shall be made not less often than annually. If for any reason such income cannot be rebated under this subsection after due diligence to do so, the amount of such income shall be retained by the Fund.

SEC. 523. PREMIUMS.

(a) AMOUNT.—A premium not to exceed 1.3 cents per barrel shall be paid to the Corporation for deposit into the Fund on—

(1) crude oil or other petroleum products entered into the United States for consumption, use, or warehousing, by the person so entering the crude oil or other petroleum product;

(2) crude oil received at a United States refinery, by the operator of that refinery; and

(3) crude oil exported from the United States, by the person exporting the crude oil.

(b) CREDITS FOR CONTRIBUTIONS TO DEEPWATER PORT AND OFFSHORE OIL FUNDS.—There shall be credited against the amount of premiums imposed on any person under subsection (a) of this section the amount paid by such person into the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund. A person entitled to a credit under this provision may transfer that entitlement to another person.

(c) PROHIBITION ON DOUBLE COLLECTION.—No premium shall be collected under this section with respect to any oil if the person who would be liable for the premium establishes that a premium has been previously imposed under this section with respect to that oil.

(d) EFFECTIVE PERIOD.—The premium imposed by subsection (a) shall only be in effect during any period when the amount in the Fund (including the value of any securities held by the Fund pursuant to section 522(d)) is less than $200,000,000.

(e) PROCEDURES.—The Corporation shall by regulation establish procedures for the establishment and collection of the premium imposed by subsection (a).

(f) COLLECTION.—The Corporation may bring an action in the district court of the United States for the collection of any premium required to be paid under this section.

SEC. 524. LIMITATION ON CORPORATION'S LIABILITY.

(a) CLAIMS PAYABLE ONLY FROM FUND.—Any claim filed against the Corporation may be paid only out of the Fund. Nothing in this title (or in any amendment made by this title) shall authorize the payment by the United States of any additional amount with respect to any such claim out of any source other than the Fund.

(b) PROHIBITION ON REDUCING FUND BELOW $30,000,000.—No amount in the Fund may be used to pay any claim, except for removal costs, to the extent that the payment of that claim would result in the Fund having an amount less than $30,000,000.

(c) PRIORITY OF CLAIMS.—If at any time the Corporation is unable by reason of subsection (b) to pay all of the claims, except for removal costs, payable at that time, those claims shall, to the extent permitted under subsection (b), be paid in full in the order in which they were finally determined. Subject to approval of the Secretary, the Corporation may borrow under subsection (d) for purposes of paying such claims in such order.

(d) BORROWING AUTHORITY.—The Corporation is authorized to issue to the Secretary of the Treasury notes or other obligations, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed upon by the Corporation, the Secretary, and the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the Corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the Corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. The purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Corporation's outstanding indebtedness under this subsection shall not exceed $300,000,000 at any time.

(e) LIABILITY LIMIT PER INCIDENT.—The liability of the Corporation under this title with respect to one incident shall not exceed $200,000,000. If the Corporation is unable by reason of the preceding sentence to pay all claims with respect to the incident, the claims shall be reduced proportionately.

SEC. 525. SERVICES AND FACILITIES OF OTHER AGENCIES.

(a) USE OF SERVICES AND FACILITIES.—The Corporation may, with the consent of the agency concerned, accept and use, on a reimbursable basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, except that any agency having custody of any data relating to any of the matters within the jurisdiction of the Corporation shall, upon request of the Administrator, make that data available to the Corporation without reimbursement.

(b) RETIREMENT AND DISABILITY FUND.—The Corporation shall contribute to the Civil Service Retirement and Disability Fund, on the basis of annual billings as determined by the Office of Personnel Management, for the Government's share of the cost of the civil service retirement system applicable to the Corporation's officers and employees and their beneficiaries. The Corporation shall also contribute to the Employee's Compensation Fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from that fund on account of the Corporation's officers and employees. The annual billings shall also include a statement of the fair portion of the cost of the administration of the respective funds, which shall be paid by the Corporation into the Treasury as miscellaneous receipts.

SEC. 526. PENALTY FOR FAILURE TO PAY PREMIUM.

Any person who fails to pay any premium as required by this title shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary. Such penalty shall be in addition to the premium required to be paid and interest on the premium in an amount equal to the amount the premium would have earned if paid when due and invested in accordance with section 522(d). Upon the failure of any person so liable to pay any penalty, premium, or interest upon demand, the Attorney General may, at the request of the Secretary, bring an action in the name of the Corporation against that person for the amount. If the Attorney General does not bring an action within 30 days, the Secretary may do so in the name of the Corporation.

SEC. 527. GOVERNMENT CORPORATION LAWS.

Section 9101(3) of title 31, United States Code, is amended by adding at the end thereof the following:

"(N) the Marine Oil Pollution Insurance Corporation.".

SEC. 528. COORDINATION WITH OTHER PROVISIONS OF THIS TITLE.

(a) PREVIOUS CLAIMS TO BE PAID FROM FUND.—If any provision of this title provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Marine Oil Pollution Compensation Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Marine Oil Pollution Compensation Fund notwithstanding any of the limitations imposed by this subtitle.

(b) TRANS-ALASKA PIPELINE LIABILITY FUND.—(1) If the Secretary or the Secretary's delegate determines that there is a Trans-Alaska Pipeline Liability Fund deficit, the premium imposed by section 523 on oil first transported through the Trans-Alaska Pipeline after the date of that determination shall be increased by 2 cents per barrel until the total amount of the increased premiums equals the deficit.

(2) For purposes of paragraph (1) of this subsection, the term "Trans-Alaska Pipeline Liability Fund deficit" means the excess (if any) of—

(A) the amount certified by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund as the total amount of the claims outstanding against the Trans-Alaska Pipeline Liability Fund under section 542(a)(3) of this title, over

(B) the total amount of the assets of the Trans-Alaska Pipeline Liability Fund as of the effective date of this section.

SEC. 529. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS.—For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(3) the term "Fund" means the Marine Oil Pollution Compensation Fund; and

(4) the term "United States", in addition to the meaning given in section 501, includes the outer Continental Shelf and any foreign trade zone of the United States.

(b) Special Rule.—In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at the refinery at the time so produced.

Subtitle C—Regulations, Effective Dates, And Savings Provisions

SEC. 541. EFFECTIVE DATES.

(a) Provisions Taking Effect on Date of Enactment.—This section, section 501, section 502, section 512, subtitle B (other than sections 522(c), 523(a), (b), (c), and (e), 524(b), (c), (d), and (e), and 526), section 542(a) (1) and (3), section 543, section 544, and each provision of subtitle A that authorizes the promulgation of regulations shall be effective on the date of the enactment of this title.

(b) Subtitle D.—Subtitle D shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) Provisions Taking Effect in 180 Days.—All other provisions of this title, and the regulations issued under this title, shall take effect 180 days after the date of enactment of this title, except that the penalty prescribed by section 511 for failure to comply with the requirements of section 505 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this title, whichever is earlier.

(d) Regulations Respecting Financial Responsibility.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 542, and in effect on the day immediately preceding the effective date of section 542 shall remain in force until superseded by regulations issued under subtitle A.

SEC. 542. CONFORMING AMENDMENTS.

(a) Trans-Alaska Pipeline Authorization Act.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 501 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 541, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (6) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Marine Oil Pollution Compensation Fund established under subtitle B of the Comprehensive Oil Pollution Liability and Compensation Act shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 501 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Marine Oil Pollution Compensation Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under subtitle A of this title.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Marine Oil Pollution Compensation Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Marine Oil Pollution Compensation Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 505 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Marine Oil Pollution Compensation Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Marine Oil Pollution Compensation Fund. The Marine Oil Pollution Compensation Fund shall assume all liability incurred by the

Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95–372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Marine Oil Pollution Compensation Fund established by subtitle B of this title. The Marine Oil Pollution Compensation Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 543. REGULATIONS AND DELEGATION OF AUTHORITY.

(a) SECRETARY.—The Secretary of Transportation may prescribe regulations to carry out the functions of the Secretary under this title. The Secretary of Transportation may delegate any of the authority of the Secretary under this title to the Marine Oil Pollution Insurance Corporation.

(b) CORPORATION.—The Marine Oil Pollution Insurance Corporation may prescribe regulations to carry out its functions under this title.

SEC. 544. SEPARABILITY.

If any provision of this title or the applicability thereof is held invalid, the remainder of this title shall not be affected thereby.

Subtitle D—Implementation of Conventions

SEC. 561. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 562. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Marine Oil Pollution Compensation Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) Intervention.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) Effect of Judgment.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 563. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 564. PAYMENT OF CONTRIBUTIONS.

(a) Payments To Be Made From Marine Oil Pollution Compensation Fund.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund by the Marine Oil Pollution Insurance Corporation from the Marine Oil Pollution Compensation Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Marine Oil Pollution Compensation Fund.

(b) Information.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to transmit to the Marine Oil Pollution Insurance Corporation such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 565. JURISDICTION OF DISTRICT COURTS.

(a) Jurisdiction.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) Venue.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 566. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 567. FINANCIAL RESPONSIBILITY.

(a) U.S. Documented Ships.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. Owned Ships.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) Other Ships.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 568. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 564(b) or 567, the regulations issued under either such section, or any denial or detention order under section 567(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 569. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 570. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 571. DEFINITIONS.

For purposes of this subtitle—

(1) terms defined in subtitle A have the same meanings when used in this subtitle;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

BACKGROUND AND NEED FOR LEGISLATION

A. In general

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) requires reauthorization in order to extend its taxing authorities and to authorize extensive improvements in the federal effort to reduce risks to human health, welfare, and the environment from uncontrolled hazardous waste sites. The task is enormous, and the program exceedingly complex, involving the coordinated efforts of a wide array of federal departments and agencies. In reviewing the provisions of H.R. 2817, the Committee has concluded that expeditious legislative action on a strengthened Superfund program is of highest priority and has accordingly completed its review of H.R. 2817 in the shortest possible time to expedite legislative consideration of the measure by the Full House of Representatives.

In receiving a sequential referral on H.R. 2817, the Committee on Merchant Marine and Fisheries has reviewed those provisions within its jurisdiction, and has focused on the following three areas:

NATIONAL RESOURCE TRUSTEESHIPS

Section 107 of CERCLA establishes liability of a responsible party to the United States and the states for damages to natural resources resulting from unlawful releases of hazardous pollutants. While the states are the primary trustees for natural resources within their borders, the Federal trusteeship over natural resources arises out of Federal responsibilities to manage and protect living and non-living natural resources. The Federal agencies exercising the trusteeship include the National Oceanic and Atmospheric Administration (NOAA) (for marine resources), the U.S. Department of the Interior (DOI) (for inland fish and wildlife and natural resources on public lands), and the Environmental Protection Agency (EPA) (for ground water).

The primary obligations of the federal trustees under CERCLA are twofold. The trustees are directed to assess the damages to natural resources under their authority in order to determine the degree of injury and the value of the damages resulting from the releases. With this information, they are then directed to bring actions against responsible parties to recover the damages to the natural resources and to use the sums recovered to restore the natural resources. In the event that responsible parties are unavailable, CERCLA authorizes trustees to file claims against the Fund to recover the costs of assessing the damages and restoring the natural resources.

The overall relationship of the natural resource responsibilities with the public health responsibilities constitutes one recurring issue in examining the CERCLA program. While CERCLA generally establishes separate responsibilities in the case of the natural resource trustees, the CERCLA program as it has evolved has tended to emphasize greater and greater cooperation between the natural resource agencies and the public health mission of EPA. In responding to immediate releases of hazardous substances, in assessing damages resulting from releases, in developing longer—term remedial programs for specific sites in the most efficient and cost-effective manner, and in pursuing resonsible parties, more and more emphasis should be placed upon coordinating the Federal effort to increase its effectiveness and efficiency.

U.S. COAST GUARD ACTIVITIES

The relationship of the proposals in H.R. 2817 to the traditional practices of the Coast Guard under CERCLA and section 311 of the Clean Water Act constitutes another area of interest to the Committee.

CERCLA and its implementing regulations divide the United States into the coastal zone and the inland zone for the purposes of delineating the response authority of the Coast Guard and the EPA. The coastal zone is defined to include the coastal areas of the U.S., including the Great Lakes, the territorial sea, the contiguous zone, and ocean waters of the high seas subject to U.S. jurdisdiction, whereas the inland zone is defined as the environment inland of the coastal zone. The Coast Guard shares with EPA fundamental responsibilities under CERCLA to respond to releases of pollutants into the environment, inclujding emergency responses, other cleanup and removal actions, investigatory responsibilities, and enforcement.

The provisions of H.R. 2817, as reported from the Commitee on Energy and Commerce, propose to modify the response authorities of EPA and Coast Guard. The Committee has reviewed current Coast Guard practice and the provisions of H.R. 2817 and has adopted a series of amendments clarifying the applicability of certain section of H.R. 2817 to Coast Guard responsibilities to improve the functioning of its response program, while exempting it from other provisions where current practice has proven effective.

MARINE POLLUTION

CERCLA establishes a broad Federal system of liability and compensation for releases of hazardous substance and pollutants into the environment, including the marine environment, reaching seaward to the full extent of U.S. territorial and natural resource jurisdiction. Subjects relating to marine pollution and the marine environment have traditionally fallen within the jurisdiction of the Committee on Merchant Marine and Fisheries, as demonstrated most aptly in this context by the Committee's continuing efforts to establish a comprehensive oil spill liability and copensation system. While CERCLA does not accord special treatment for release into the marine environment, the Committee has paid particular attention to the implication of the CERCLA program for coastal and marine pollution and its effect on living resources.

B. In Relation to Title V, the Comprehensive Oil Pollution Liability and Compensation Act.

This is the sixth Congress in which there has been an attempt to enact legislation to provide a comprehensive system of liability and compensation for damage caused by oil pollution. While existing laws permit the U.S. government to be compensated for certain cleanup and removal costs, there is no comprehensive legislation in place that promptly and adequately compensates those who suffer other types of economic loss as a result of an oil pollution incident.

Legislative consideration of the issue began in the 94th Congress in response to a Ford Administration proposal for implementing two international conventions relating to oil pollution liability. These were the International Convention on Civil Liability for Oil Pollution Damage (1969) and the International Fund for Compensation for Oil Pollution Damage (1971). The Merchant Marine and Fisheries Committee tentatively rejected the notion of implementing the two Conventions, but approved instead a proposal to establish a comprehensive domestic oil pollution liability and compensation regime. That bill, H.R. 14862, was reported by the Committee in September, 1976, too late in the Congress for other Committees to take action.

Similar legislation was approved by both the House and the Senate during the 95th Congress, but failed to become law when an agreement could not be worked out on precise language during the Second Session of that Congress.

During the 96th Congress, the House again approved a bill to establish rules for liability and compensation for damages caused by oil spills. Similar legislation, the proposed Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), was approved to deal with spills of hazardous substances. Serious consideration was given to combining the two bills in order to cover spills of both oil and hazardous substances. That plan was dropped, however, as part of a compromise very late in the Congress to ensure the enactment of CERCLA, with coverage restricted to pollution from hazardous substances. Committee leaders in both the House and the Senate expressed an intention at that time to make consideration of an oil pollution liability bill a "priority" in the 97th Congress.

The Committee on Merchant Marine and Fisheries thus proceeded to approve a version of this legislation in 1981. Consideration of a companion bill in the Senate was stifled, however, by opposition from the Executive branch. Despite this opposition, the Merchant Marine and Fisheries Committee again approved an oil pollution liability bill, H.R. 3278, early in the 98th Congress. In May, 1984, Secretary of Transportation Elizabeth Dole announced a change in the Administration's position with respect to the legislation; she testified on behalf of most of the major provisions of the bill at an oversight hearing of the Subcommittee on Coast Guard and Navigation the following month.

On August 10, 1984, the House approved a comprehensive oil pollution liability bill for the third time when it accepted the text of

H.R. 3278 as an amendment to H.R. 5640, the proposed Superfund Expansion and Protection Act of 1984. That legislation was referred to the Senate Committee on Finance, where no action was taken.

Despite the failure thus far to enact this legislation, the Committee believes that an overwhelming case can be made that it would be in the national interest to do so. Title V improves upon present law in the following respects:

1. It will guarantee that those suffering economic loss as the result of an oil spill from a vessel or offshore facility will be quickly and fairly compensated for the loss, whether or not the spiller accepts liability or admits negligence in connection with the discharge of oil;
2. It will impose a concept of strict liability on those producing or transporting oil in order to encourage a high standard of care in oil-related operations and make certain that those responsible for pollution will be held primarily responsible for the cost;
3. It will encourage prompt and complete clean-up of oil spills from vessels or offshore facilities, including relatively chronic pollution, such as that caused by tar balls;
4. It will reduce the cost to the taxpayer of cleaning up oil spills by creating an industry-financed fund to be available to reimburse the government for cleanup activities not otherwise compensated;
5. It will simplify and reduce federal administrative costs by eliminating four single-purpose oil pollution liability funds presently in existence and replacing them with a single fund established as a non-profit governmental corporation liable for all costs of administering this legislation;
6. It will establish a clear and predictable legal and regulatory framework within which actual or potential claimants, spillers, and insurers will be able to make decisions relevant to oil pollution matters;
7. It will encourage efforts to improve international standards of oil pollution liability and compensation; and
8. It will eliminate certain provisions of the Outer Continental Shelf Lands Act Amendments of 1978 which distort traditional methods of allocating pollution liability within the offshore oil production industry.

Approximately 11,000 oil pollution incidents occur in U.S. waters every year, spilling from 10 to 14 million gallons of petroleum into the marine environment. Many of these spills are so small that no federal response is warranted, and no damages are caused. Since 1972, however, the Coast Guard has responded to approximately 10,000 spills, totalling more than 38,000,000 gallons of oil.

The Coast Guard's response is authorized by the Federal Water Pollution Control Act (FWPCA). The Fund created by Section 311(k) of that Act consists of appropriated money used to finance cleanup activities. Theoretically, the Coast Guard can recover its expenditures by taking legal action or by negotiating informally with those responsible for the pollution. Unfortunately, cost recovery efforts have been hampered by the limits of liability which are contained in FWPCA, by the unknown source of some spills, and by the delays, compromises, and procedural problems associated with most formal legal actions. Since the 311(k) fund was created, the

Coast Guard has spent almost $131 million cleaning up oil spills but has been able to recover only $61 million.

The difficulty of recovering cleanup costs has led to a reluctance on the part of the Coast Guard to commit section 311(k) money to clean up oil spills in other than dramatic or emergency situations.

Many state officials have complained about the difficulty of getting federal funds to assist in local cleanup operations, and several states have, as a result, developed their own revenue sources for responding to pollution incidents. Under Title V, federal cleanup efforts would be reimbursed by the Fund, which is financed not by the taxpayer, but by a premium of up to 1.3 cents a barrel imposed on oil. If the person responsible for the spill cannot be found or is able to limit his liability, the Fund, not the taxpayer, would be available to pick up the bill. Present law does not provide any assurance that those suffering economic loss as the result of an oil spill will be able to receive compensation for their loss.

Claimants other than the federal government are now in a particularly bad position. Unless they are able to prove that the spill resulted from negligence on the part of the owner or operator, no recovery of damages is likely. Even if negligence is proven, individual claimants may not be able to recover for loss of income and state governments may not be able to recover for damage to natural resources, due to common law interpretations of those damages for which compensation may be required. In any event, prolonged legal wrangling is almost inevitable with respect to any substantial spill in which the extent of fault and the scope of damages are not clear cut.

Under Title V, all claimants, whether governmental or individual, will have the option of negotiating with the spiller or of submitting a claim to the newly-created Fund. In all except the most extreme circumstances, a claimant will be able to recover in full for a broad list of clearly spelled out damages. He will be able to recover regardless of whether the negligence of the responsible party resulted in the oil pollution incident. There will also be a guarantee, through the requirement that a potential spiller possess adequate insurance or other evidence of financial responsibility, that the person liable for damages will have the resources necessary to compensate claimants or, by subrogation, the Fund, for damages and costs incurred.

The system established by Title V will permit claimants to have a clear understanding of their rights and a guarantee that their claims will be promptly and fairly considered. The oil cargo owners and the transportation and offshore production industries will know in advance the potential pollution liability to which they may be exposed and will be required, when appropriate to have insurance of financial guarantees to cover the cost. The federal taxpayers will be spared administrative and pollution cleanup costs they are currently required to bear, and all concerned will have the benefit of operating under uniform standards of libability, damage definitions, insurance requirements, and claims settlement procedures.

Title V also provides for the coordination of the federal and state governmental approaches to the problem of oil spill liability. Unlike some previous versions of the legislation, Title V prescribes pollution liability rules only for vessels and offshore facilities. All vessels are included because of the interstate nature of the waterborne petroleum transportation trade and because spills into the navigable waters may likely cause damage in more than one state. In addition, facilities which operate beyond state jurisdiction on the outer Continental shelf or pursuant to a license issued under the Deep Water Port Act are also clearly a federal responsibility. Facilities located wholly on land or in state waters are not included within the scope of Title V.

This legislation will prohibit state governments from imposing financial responsibility requirements or liability limits which exceed those spelled out in Title V for those vessels and facilities covered by Title V. In addition, state governments will be prohibited from requiring any person to contribute to a fund the purpose of which is to compensate for an economic loss described in Title V, subject to a three-and-a-half year grace period for those states with existing tax or fee mechanism of this type. State and local courts would no longer have jurisdiction over lawsuits for an economic loss compensable under Title V. Beyond these limitations, however, state governments will be permitted to establish whatever mechanisms and procedures they wish to protect themselves from oil pollution damage, such as a state cleanup and compensation fund financed by appropriations from the state general treasury.

In return for yielding a measure of their regulatory and taxing authority, states will receive a guarantee of greater federal cooperation in responding to many oil spills and an enormously increased level of protection for themselves and for their citizens from pollution incidents which are either catastrophic in scope or for which existing legal remedies are inadequate.

Title V would, as in years past, establish equitable limits on the liability of those who own or operate oil carrying vessels, pipelines, or offshore oil production facilities. A single federal fund, financed entirely by a per barrel premium of up to 1.3 cents a barrel in oil, would be available to help provide compensation in the event of very large spills. This fund would replace four different federal oil spill funds that presently exist. Victims of oil pollution would be required initially to negotiate with the person responsible for the spill but would be permitted to seek compensation from the federal fund if a prompt settlement with the spiller proves not to be possible.

Although Title V is identical in most repects to the version that was approved by the House of Representatives last year, there are significant differences.

First, Title V would provide for an immediate refund to the general Treasury of more than $20 million from the oil spill cleanup fund established by Section 311 of the Federal Water Pollution Control Act. This fund, which is financed by general tax dollars, has borne more than $70 million in unreimbursed oil spill cleanup costs since it was created in 1972. Rather than continue to use general tax money for oil pollution cleanup, the legislation will return the remaining funds to the taxpayer and require all oil pollution costs to be borne directly or indirectly by those responsible for the pollution.

Second, Title V provides the limits on liability for oil spill incidents that are roughly equal to those approved for the international community by the May, 1984, Diplomatic Conference which adopted a Protocol (i.e., amendments) to the International Convention on Civil Liability for Oil Pollution Damage in which the limits on liability under that Convention were substantially increased. Under Title V the liability of a vessel carrying oil in bulk as cargo (other than an inland oil barge) would be $420 per ton of the vessel, with a minimum of $3 million and a maximum of $60 million. The liability of a vessel not carrying oil in bulk as cargo would be $300 per ton, with a $500,000 minimum. The liability of an inland oil barge ($150 per ton, with a minimum of $150,000) and that of a facility ($50 million) would not change from that in H.R. 5640 as approved by the House last year.

Third, Title V provides for the establishment of a Marine Oil Pollution Insurance Corporation (the Corporation) as a wholly-owned government corporation located within the Department of Transportation.

The Corporation will be managed by an administrator appointed by the President with the advice and consent of the Senate. The Corporation will be responsible for management of the Marine Oil Pollution Compensation Fund (the Fund), to be financed by a premium on oil produced in or transported to the United States. Other sources of revenue for the Fund include moneys transferred from the OCS oil pollution contingency fund and the Deepwater Port Oil Pollution fund.

The Corporation will be responsible for administering the Fund and for implementing the claims procedures established by the Act.

The legislation is predicated on the assumption that oil spills will continue to occur. Inevitably, some of those spills will result in significant damage to personal property or natural resources and expense to those charged with the responsibility for removing or containing the oil.

No witness who has testified before the Committee over the past ten years has questioned the fundamental equity of adopting a standard of strict pollution liability for those who produce and transport oil. The inadequacy of present law and the need for legislation of this type has been recognized by a broad range of groups, including the Administration, the oil industry, the shipping and barge industries, fishermen, most state governments, environmentalists, and the insurance industry. Disagreements persist about the precise scope and language of certain provisions in the bill, but the text of this legislation reflects compromises and understandings worked out not just this year but over the course of the last decade by those convinced of the need for this type of bill. Members of the Committee on Merchant Marine and Fisheries will remain willing to work with other Congressional Committees, with the Administration, and with the public to guarantee the enactment of a broadly acceptable and effective comprehensive oil pollution liability bill.

Purpose of the Legislation

The purpose of H.R. 2817 is to reauthorize and amend the Comprehensive Environmental Response, Compensation and Liability

Act of 1980. The purposes of the amendments adopted by the Committee on Merchant Marine and Fisheries are threefold: to improve the coordination of the natural resource trusteeship responsibilities with the primary public health responsibilities of CERCLA; to clarify the applicability of certain provisions of H.R. 2817 to releases from vessels and to the responsibilities of the U.S. Coast Guard; and to bring together procedurally the legislative consideration of the Comprehensive Oil Pollution Liability and Compensation Act with the reauthorization of CERCLA itself. The Committee has also adopted several amendments with additional objectives, each of which is explained in the section-by-section, infra.

COMMITTEE ACTION

The House Merchant Marine and Fisheries Committee received a sequential referral of H.R. 2817, a bill to amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980, when the Committee on Energy and Commerce reported the bill on August 1, 1985. The bill was held at Full Committee by agreement of all interested Subcommittees. Due to the brevity of the referral and the Committee's desire to act as expeditiously as possible on the legislation, the Committee conducted no hearings on H.R. 3817, and proceeded to markup the legislation on October 1, 1985.

Chairman Jones offered five amendments, en bloc, which were adopted by unanimous voice vote. The purpose of the amendments is to improve coordination between federal natural resource agencies and EPA during the investigation and cleanup of Superfund sites, as well as during negotiations with potentially responsible parties. In addition, the amendments will preserve access to Superfund in order to finance the cost of performing natural resource damage assessments, while also increasing from three to six years the time during which federal trustees must initiate natural resource damage actions.

Three amendments were offered en bloc by Mr. Breaux and adopted by the Committee by unanimous voice vote. The first of the amendments requires that EPA take into account the possibility of human food chain contamination when ranking sites for inclusion on the National Priorities List. The second would treat hazardous waste incineration vessels in the same manner as onshore incineration facilities for the purpose of establishing liability limits and demonstrating financial responsibility. The third amendment would amend Title I of the Marine Protection, Research and Sanctuaries Act to clarify that enactment of that Title I was not intended to supersede any liabilities or rights of action relating to marine pollution contained in other law.

Mr. Studds offered 15 amendments en bloc that were adopted by the Committee by unanimous voice vote. Most of the amendments were either technical or designed to clarify the applicability of H.R. 2817 to releases from vessels as well as releases from facilities. Other amendments in the package included: the preservation of existing law relating to the negotiation of settlements and the availability of direct action against guarantors in the case of releases from vessels; the addition of the Federal Food, Drug, and Cosmetic Act to the list of statutes that EPA must consider in assessing the adequacy of remedial actions; and a limitation on the authority of the Administrator to waive Federal environmental standards for remedial actions when selecting a cleanup option for certain hazardous waste sites. After adoption of the package of 15 amendments en bloc, Mr. Studds offered the text of H.R. 1232, the Oil Pollution Liability and Compensation Act as previously reported by the Merchant Marine and Fisheries Committee, with three changes. A perfecting amendment offered by Mr. McKernan was defeated by voice vote.

The bill, as amended, was adopted and ordered favorably reported by a recorded vote of 38 in favor, 1 opposed. A majority quorum was present.

SECTION-BY-SECTION ANALYSIS

The following section-by-section analysis applies to amendments adopted by the Committee on Merchant Marine and Fisheries to H.R. 2817, as reported by the Committee on Energy and Commerce. The section headings which follow refer to the sections of H.R. 2817, as reported from the Committee on Energy and Commerce.

Section 103

The amendment to section 103 of H.R. 2817 is a technical amendment to clarify the meaning of section 103(b) of CERCLA. Section 103 of H.R. 2817, as reported by the Committee on Energy and Commerce, seeks to clarify the meaning of section 103(b) of CERCLA by changing the point at which the language of the subsection is divided through indentation. The language of this amendment makes this division at a more appropriate point than does the language included in the Energy and Commerce bill. The effect of the change is to make it clear that the penalty for failure to notify the government of a release of hazardous substances shall be applicable to the owner and operator of a vessel, as well as to the owner and operator of a facility.

Section 104

A. The Committee adopted two amendments to section 104 of the bill, the first of which adds a new subsection (n). The amendment proposes a new paragraph (2) to section 104(b) of CERCLA which requires EPA to notify promptly appropriate federal and state natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to section 104 of CERCLA. The new paragraph also directs EPA to coordinate its assessments, investigations, and planning undertaken pursuant to section 104 with federal and state natural resource trustees. The intent behind the amendment is to coordinate federal remedial investigations, undertaken by or on behalf of EPA, with federal and state natural resource investigations, undertaken by or on behalf of appropriate resource trustees, at the earliest possible stage in the planning process. This coordination is intended to consolidate the response effort at National Priorities List sites so as to increase the overall efficiency of the effort and the compatibility of the remedial investigations and natural resource-related investigations undertaken at any one site.

B. The second amendment makes a series of technical changes to section 104(k) of the bill to guarantee that the Coast Guard will have access to vessels on which hazardous substances are being transported in the same manner, and to the same extent, that the EPA will have to facilities handling hazardous substances located on land. The amendment modifies section 104(k) of H.R. 2817, as reported by the Energy and Commerce Committee, by including the term "vessel" at appropriate points to make clear that the subsection applies to hazardous substances on or releases from vessels as well as to hazardous substances at or releases from facilities. In reporting this subsection, the Committee notes the use of the term "Administrator" in light of the definition in section 101(b), and therefore regards the reference to the Administrator in this subsection as referring in the appropriate instances to other federal agencies with investigative responsibilities under CERCLA, including the U.S. Coast Guard. The Committee further notes that in certain instances federal natural resource trustees may require access to facilities or information in order to fulfill their investigative responsibilities under CERCLA. To promote the ready access to such information where EPA or the Coast Guard may not be simultaneously undertaking their own investigations, the Committee anticipates that EPA and the Coast Guard will delegate authority to gain the access authorized under this subsection to federal natural resource trustees.

Section 105

The Committee adopted an amendment to section 105(c) of H.R. 2817, which itself amends section 105(a)(8)(A) of CERCLA (as redesignated). The amendment adds human foodchain contamination to the list of factors to be considered by EPA when ranking sites on the National Priorities List (NPL). The Committee is concerned that the risks to public health from food chain contamination is not directly accounted for in the factors used by EPA to rank hazardous waste sites on the NPL and therefore adopts this amendment to ensure that current and future cleanup priorities of EPA properly account for human foodchain contamination.

Section 107

A. Section 107(c)(2) of H.R. 2817, as reported by the Committee on Energy and Commerce, amends section 107(d) of CERCLA to exclude state and local governments from liability for costs or damages resulting from actions taken in response to an emergency created by the release or threatened release of a hazardous substance. The amendment to section 107(c)(2) of the bill approved by the Merchant Marine and Fisheries Committee extends this exclusion to cover a release from a "facility or site" as provided in the Energy and Commerce Committee bill.

B. The amendment to section 107(d) of H.R. 2817 is intended to clarify that the federal agencies currently designated as the natural resource trustees under Subpart G of the National Contingency Plan (NCP) are responsible for assessing damages for injury to, destruction of, or loss of natural resources under their trusteeship. Section 107(d) of H.R. 2817, as reported by the Committee on Energy and Commerce, authorizes the Administrator of EPA to designate the federal officials who are to act on behalf of the public as trustees for natural resources under CERCLA and section 311 of the Clean Water Act. Questions have been raised as to whether section 107(d) is compatible with section 101(a) of H.R. 2817, which is intended to specify that EPA does not have the authority to delegate or revoke the delegations from the President to federal agencies under the NCP. To make clear that the designations of the Federal natural resource trustees in the current National Contingency Plan are to remain in effect, the Committee has adopted this amendment.

The amendment makes clear that the responsibility to assess damages for injury to natural resources lies with the federal agency designated as the natural resource trustee for those resources and is a straightforward statement of similar authority currently located in section 111(h) (1) and (2) of CERCLA. Of course, by specifying that the federal natural resource trustees shall assess damages, the Committee does not intend to foreclose their flexibility to reach agreements with potentially responsible parties whereby the parties themselves undertake the assessments.

C. The Committee has adopted an amendment to clarify the purposes for which certain sums recovered under CERCLA may be used, adding a new paragraph (2) to section 107(d) of the bill. Under section 107(a)(4)(C) of CERCLA, responsible parties are liable for damages to natural resources resulting from a release of hazardous substances. Claims for these damages may be brought by the President, or the authorized representative of a state, as trustee for the natural resources that are damaged. Under the current language of the law, sums recovered through such claims "shall be available for use to restore, rehabilitate, or acquire the equivalent" of those resources. Various federal agencies, including NOAA and the Department of the Interior, have been designated under the National Contingency Plan as trustees for natural resources managed or protected by the United States.

Although the current statutory language seems clear, the language does not specify the procedure by which sums recovered through natural resource damage claims will be made available for the purpose of restoring or replacing those resources. As a result, amounts recovered through these claims would, it appears, be deposited in the general fund of the Treasury. A federal trustee would then be required to seek a special appropriation from the Congress in order to spend the money for resource restoration or replacement.

This amendment clarifies the language of Section 107(f)(1) of CERCLA to provide specifically that sums recovered by a federal natural resource trustee shall be retained by that federal natural resource trustee shall be retained by that trustee, and shall be used, without further appropriation, to restore, replace, or acquire the equivalent of the damaged resource. Sums recovered under this Act by a State trustee shall be used for similar purposes.

The Committee notes that the amendment refers to retention of funds by the "Administrator". The Committee retains this language to conform to the prevailing usage of the term "Administrator" as proposed by section 101 of the bill. However, the Committee intends by this amendment that the term "Administrator" be interpreted as referring to the federal natural resource trustee with responsibility for the natural resources damaged by the release.

The Committee notes that the last sentence of this amendment, which is essentially a restatement of the language of the existing statute, has been the source of some confusion. Both the amendment and the present language of CERCLA state that sums recovered through a natural resource damage suit shall be used for natural resource restoration and replacement, but that the amounts recovered shall not be limited to those that can be used for that purpose. It is clear from this language that the primary purpose of the resource damage provisions of CERCLA is the restoration or replacement of natural resources damaged by unlawful releases of hazardous substances. However, the final clause is necessary because a situation could arise in which the amount of damages caused by a release of hazardous substances is in excess of the amount that could realistically or productively be used to restore or replace those resources. That is, the total amount of damages may include the costs of restoration and the value of all the lost uses of the damaged resources, but public and private, from the time of the release up to the time of restoration. Since the damages contemplated by CERCLA include both, the total amount of damages recoverable would exceed the restoration costs alone.

The Committee therefore intends than any excess funds recovered shall be used, in such an instance, for the third purpose spelled out in the language of the amendment, which is to "acquire the equivalent of the damaged resource". This language is modeled after section 111(c)(2) of CERCLA, which is deleted by section 111(e)(2) of H.R. 2817, but the money is recovered from the responsible party, not from the fund itself. The Committee expects that any such acquisition would provide resources of an equivalent nature at a location as near as reasonably possible to the site at which the damages occurred.

It should be noted that the language of the amendment also differs from the current language of CERCLA by changing the phrase in Section 107(f) from "restore, rehabilitate, or acquire the equivalent" of a damaged natural resource to "restore, replace, or acquire the equivalent." The substitution of "replace" for "rehabilitate" was made for two reasons. First, the Committee believes that the concept of "restoring" a natural resource would include any action taken to "rehabilitate" a resource, thus making the term "rehabilitate" redundant. Secondly, the change to "replace" in the third sentence of Section 107(f) will conform the language to that used in the penultimate sentence of the subsection.

D. The Committee adopted an amendment to subsection 107(f) of H.R. 2817 to make the federal lien provisions of H.R. 2817, as reported by the Committee on Energy and Commerce, applicable to incidents involving a release of hazardous substances from a vessel. Section 107(f) of H.R. 2817 proposes a new subsection (k) to section 107 of CERCLA that establishes a lien in favor of the Federal Government upon real property subject to response actions where the property belongs to persons liable for costs and damages under CERCLA. It is not clear, under the bill as reported by the Committee on Energy and Commerce, if or how this language would apply in the event of a hazardous substance release from a vessel. The amendment approved by the Merchant Marine and Fisheries Committee adds a separate subsection (l) to section 107 of CERCLA stating specifically that the costs and damages for which the owner or operator of a vessel is liable with respect to a release of a hazardous substance shall constitute a maritime lien in favor of the United States on that vessel. It should be clear from this language that the lien shall apply only to the vessel that was the source of the release, or the threat of a release, for which liability has been incurred by the owner or operator. The language of this amendment is modeled after a similar maritime lien provision contained in section 311(f) of the Federal Water Pollution Control Act.

E. The Committee has adopted a new subsection (g) of section 107 of the bill that contains a technical amendment to section 107(a) of CERCLA intended to clarify the meaning of the section. The amendment changes the point at which the language is indented in order to make it clear that the liability spelled out in the subsection is applicable to all of the categories of persons listed in section 107(a)(1) through 107(a)(4).

Section 108

A. The amendment to section 108(a) of H.R. 2817 is a technical change pertaining to evidence of financial responsibility which replaces the word "section" with "subsection" in the amendment itself. The amendment makes it clear that the language added by the subsection is applicable only to the provisions of the subsection (section 108(b) of CERCLA, affecting facilities) and not to section 198(a) of CERCLA (affecting vessels).

B. The amendment to section 108(b) of H.R. 2817 is intended to preserve existing provisions of CERCLA pertaining to direct action against guarantors of vessels. Section 108(b) of H.R. 2817 amends section 108(c) of CERCLA relating to the right of claimants to present claims directly against those providing evidence of financial responsibility for persons potentially liable under CERCLA. As reported by the Committee on Energy and Commerce, the new language would limit the right of direct action against guarantors to cases in which the liable party is bankrupt or insolvent. The new language would also permit guarantors to invoke so-called "policy defenses" in order to avoid having to make payment on a claim.

This amendment would preserve the substance of existing law concerning direct action against those providing evidence of financial responsiblity for vessels, while retaining the more limited direction action provisions proposed by the Energy and Commerce Committee concerning those providing evidence of financial responsibility for facilities.

There are three reasons why it does not make sense to change existing law with respect to direct action as it affects those providing evidence of financial responsibility for vessels. The first is that such a change is not necessary. Language identical to that now contained in CERCLA is contained in the oil spill liability provisions of the Outer Continental Shelf Lands Act Amendments of 1978. Insurance companies have been able to operate successfully under the terms of that Act.

Secondly, liability for most vessels under CERCLA is easier to determine than is liability for a facility. A vessel owner or operator is liable for $300 for each gross ton of the vessel, or for $5,000,000, whichever is more, if the vessel carries hazardous substances. Vessels incinerating hazardous substances would have to satisfy new requirements established in section 125 of H.R. 2817.

Finally, the direct action provision of current law has been helpful to the Coast Guard in obtaining the cooperation of vessel owners in responding to spills of oil and hazardous substances. This is true because vessels are often controlled by single-ship corporations with owners who may be difficult to reach and which have few, if any, other assets. Because of direct action, guarantors have proven helpful in arranging for the promptest possible cleanup of oil and hazardous substance spills.

C. The Committee adopted an amendment to section 108(b) of the bill, which proposes to create a new subsection (d) of section 108 of CERCLA to make it clear that the total liability of any person providing a guarantee of financial responsibility under CERCLA shall be limited to the aggregate amount of the financial responsibility provided by that person. The amendment approved by the Committee on Merchant Marine and Fisheries makes it clear that this limitation will apply to anyone providing evidence of financial responsibility for a vessel, as well as to anyone providing evidence of financial responsibility for a facility.

Section 111

The amendment to section 111(e) of the bill is intended to retain access to the Fund to finance the costs of assessing damages to natural resources incurred by or on behalf of federal or state natural resource trustees. Section 111(e), as reported by the Committee on Energy and Commerce, proposes to prohibit the use of Superfund money to finance natural resource damage assessments and resource restorations. The purpose of this amendment would be to retain access to the Fund for paying the costs of assessing damages to natural resources. By ensuring that the federal and state natural resources trustees have adequate funds to conduct resource assessments, the amendment will enable the trustees to develop the information they will need to document damages to natural resources and to recoup damages through actions against responsible parties, thus fulfilling their responsibilities under CERCLA to assess damages and seek compensation from responsible parties. As EPA itself has argued in its proposed claims procedures:

> . . . The most cost-effective use of the limited Fund resources may be to provide funding to a trustee for an assessment (instrumental in the preparation of many cases) and then encourage the trustee to institute a court action for the costs of conducting any required restoration. EPA, Proposed Arbitration and Natural Resource Claims Procedures, 50 *Federal Register* 9599 (1985).

In adopting this amendment, the Committee intends that the processing of claims against the Fund be governed by the EPA claims procedures promulgated under section 112 of CERCLA. The Committee intends that the primary responsibility for determining priorities among the natural resource damage assessments for purposes of allocating resources should lie with the natural resource trustees charged with managing and protecting those resources, for it is they who are best equipped to judge which resource assessments should receive priority. EPA, as the manager of the Fund, is responsible for the longer-term judgments as to the availability of money in the Fund to finance natural resource damage assessments in general over a given period, but should not attempt to determine on a case-by-case basis if one particular assessment should receive priority over another.

The Committee further intends that the natural resource trustees exercise appropriate discretion in deciding whether, to undertake a major, type "B" natural resource damage assessment. The Committee does not intend by this amendment to provide federal or state natural resource trustees with blank checks to conduct resource assessments. A decision on whether to undertake an assessment must take into account, among other things, the costs of the assessment in relation to the value of the damages that may have occurred and the likelihood that the assessment will lead to a successful action to recover the damages.

Where a site may involve damages to natural resources under the trusteeship of more than one federal or state agency, then the natural resource trustees themselves should develop workable procedures to avoid duplication of effort, overlapping claims, or redundant assessments. The Committee does not intend to specify statutorily the proper relationships that should govern in each instance, believing that it should be determined on a case-by-case basis. In some instances, the trustees may designate a "lead trustee" for the purpose of coordinating investigations and research, while in other cases, less formal cooperative arrangements may be more appropriate.

Finally, the Committee notes that the deletion of section 111(i) of CERCLA, as proposed by the Committee on Energy and Commerce, eliminates the current requirement that natural resource trustees prepare restoration plans before committing funds under CERCLA to such restoration, and the requirement that these plans are to be approved by the affected federal agencies—the appropriate natural resource trustees—and their state counterparts. The Committee believes that the preparation of a thorough restoration plan prior to the undertaking of a restoration itself makes good sense and intends that the natural resource trustees continue to prepare these plans prior to commencing restoration.

Section 113

The amendment to section 113(b) of the bill extends the statute of limitations for filing claims for damage to natural resources from three years to six years, thereby conforming it to the statute of limitations for actions to recover general response costs. Actions to recover for damage to natural resources may depend upon the type of remedial action undertaken at a particular site, because the specifics of the remedial action may determine the extent of damage to natural resources that will remain at the site. If the remedial action takes care of most of the natural resource damage at the site, then a separate action for damages may not be necessary. Conversely, if at the conclusion of the remedial action substantial damage remains, then action to recover damages may be warranted. Since the judgment of the necessity for pursuing a damages action must necessarily await the final decision on the remedial action, it is best to ensure that the statute of limitations for bringing such damages actions does not force a premature decision. The statute of limitations should therefore be extended to six years, since selection of final remedial actions for a site listed on the NPL will be completed within six years, pursuant to the anticipated schedules for these sites.

In revising this statute of limitations, the Committee understands that the failure of the Department of the Interior to promulgate damage assessment regulations in a timely fashion may have foreclosed several states from initiating natural resource damage actions within the required time. Accordingly, the Committee intends by this new statute of limitations to provide an additional opportunity to initiate such actions after the regulations are promulgated.

Section 114

The amendment to section 114 of H.R. 2817 applies to Title I of the Marine Protection, Research and Sanctuaries Act, commonly referred to as the Ocean Dumping Act. The amendment modifies subsection (g)(5) of section 105 of the Ocean Dumping Act to clarify that Congress did not intend to preempt any right which any person may have under any statute or common law to seek enforcement of any standard or limitation established under the Ocean Dumping Act or to seek other relief. The amendment was prompted by a series of recent court decisions that concluded that Congress intended to preempt federal common law and federal maritime tort law in the field of marine pollution when it enacted the MPRSA. The intent of the Committee in adopting this amendment is to overturn those decisions insofar as they relate to the ability to secure remedies for damages under other applicable federal or state law. This amendment is similar to an amendment earlier reported by the Committee in H.R. 1957, the Ocean Dumping Act Amendments of 1985, and the intent of the Committee in reporting this amendment is similar to its intent with respect to the earlier amendment. It should be pointed out that the amendment adopted by the Committee to H.R. 1957 differs in several respects from this amendment. First, it only applies in the case of non-compliance with the requirements of Title I of the MPRSA. Second, it only authorizes damages as an additional remedy, over and above the injuctive relief already provided by Title I of the MPRSA. This latter limitation is intended to foreclose the possibility that a Federal court might impose permit requirements in addition to those already required by Title I of the MPRSA under the guise of federal common law, as was the case in *Illinois* v. *Milwaukee,* 406 U.S. 91 (1972). For a further discussion of that amendment, see the section-by-section analysis of section 15 of H.R. 1957, as contained in House Report 99-107, Part I, page 25.

Section 115

Section 115 of H.R. 2817, as reported by the Committee on Energy and Commerce, adds a new section 116 of CERCLA establishing an Agency for Toxic Substances and Disease Registry

(ATSDR) within the Public Health Service. The Administrator of the ATSDR is charged, under this section, with the responsibility for implementing the health related authorities of CERCLA. The section requires the Administrator to cooperate with certain other federal agencies in carrying out this task. The amendment approved by the Committee on Merchant Marine and Fisheries would add the Secretary of Transportation to the list of federal officials with whom the Administrator shall cooperate.

The reason for the addition of the Secretary of Transportation to the list is that the Coast Guard, which is located within the Department of Transportation, has been delegated the responsibility of responding to spills of hazardous substances from vessels and to certain other spills into the marine environment. The Coast Guard also has general authority to enforce federal laws on the navigable waters of the United States. Occasions may arise, therefore, in which the assistance of the Coast Guard could be important in resolving a health-related issue. This section provides, for example, for the establishment and maintenance of a list of areas closed to the public or otherwise restricted because of contamination caused by hazardous substances or other pollutants or contaminants. The Coast Guard could have an important role in enforcing the closure of any such site located in the navigable waters. The Committee does not expect that the Administrator of the ATSDR would seek the advice of the Secretary of Transportation on issues not involving the Coast Guard or other agencies located within the Department.

Section 118

The amendment adopted by the Committee to section 118 of the bill is intended to ensure that the liability protections provided by that section are available to contractors who assist in cleaning up spills from vessels. Section 118 of H.R. 2817 establishes a new section 119 of CERCLA providing for limitations on the liability of response action contractors. In the version of H.R. 2817 reported by the Committee on Energy and Commerce, this section applies only to a contractor responding to a release from a facility. The amendment adopted by the Committee adds the term "vessel" to appropriate places in the section in order to make clear that the section is intended to apply to response action contractors responding to releases from vessels as well.

Section 120

A. The Committee adopted two amendments to section 120, which proposes to add a new section 121 to CERCLA on clean-up standards. The first amendment modifies subsection (d)(1) of the proposed new section 121 by requiring the Administrator to consider relevant tolerance levels established under the Federal Food, Drug and Cosmetic Act when assessing the adequacy of remedial actions. The inclusion of this statute on the list of statutes required to be considered is appropriate because the statute authorizes the Food and Drug Administration to establish standards for determining acceptable levels of hazardous substances in fish and shellfish.

The provision of the Federal Food, Drug and Cosmetic Act that is most likely to be applicable to a cleanup under CERCLA is Section

406 (21 USC 346). This provision requires the Secretary of the Department of Health and Human Services to promulgate regulations limiting the quantity of poisonous or deleterious substances that may be included in food without jeopardizing the protection of human health. Under current regulations, for example, the permissible amount of PCBs in fish is two parts per million.

In approving this amendment, the Committee seeks to emphasize the importance of cleaning up estuarine and marine hazardous waste sites to the extent that areas currently closed to commercial fishing or shellfishing due to hazardous substance contamination may be reopened. The language of the amendment does not make cleanup to this standard a requirement of the law, but it does require the Administrator to consider this standard, among other relevant factors, when selecting the appropriate option for cleaning up a hazardous waste site.

B. The second amendment to section 120 of H.R. 2817 adopted by the Committee proposes to add a new subsection (g) to the proposed new section 121. This amendment limits the authority of the Administrator to waive the standards for remedial actions that are contained in the new section 121. Under the amendment, the Administrator may waive the standards in subsection (d) with respect to certain facilities specially designated by a State under Section 105 of CERCLA only with the agreement of the Governor of that State. The designation referred to is that which is permitted under Section 105(a)(8)(B) of CERCLA (as redesignated), which allows each State to designate the site within that State which poses the greatest threat to public health, welfare, and the environment. The Committee notes that H.R. 2817 would amend Section 105(a)(8)(B) to make it clear that a State will only be permitted to designate a facility as its highest priority on one occasion. This is consistent with the Committee's intent that the language of this amendment apply only to facilities that were designated as the highest priority of a State at the time the Committee acted.

The second criteria for determining whether the limitation created by this amendment would apply is that it will only apply to a facility at which a release of hazardous substances has caused damages to natural resources, compensation for which is sought by the U.S. Government through a claim filed prior to January 1, 1984.

As a result, the limitation on the waiver authority of the Administrator would apply only to a facility that has been designated by a State under section 105 prior to October 1, 1985, and which is the subject of a Federal natural resource trustee damage lawsuit brought under CERCLA by a Federal trustee prior to January 1, 1984. The Committee is aware of only one site that meets these two criteria, the New Bedford Harbor site in Massachusetts.

This amendment was prompted by the belief that any site specially designed by the Governor of a State as being the greatest threat to public health within that State should be accorded a high priority under the law, and it is particularly important that the views of the Governor be taken fully into consideration before a remedial action plan is adopted. The case for involving the Governor is even stronger with respect to a site where insufficient damage to natural resources has occurred to prompt the federal government to initiate a claim for damages under Section 107 of CERCLA. The relatively narrow impact of the amendment was designed to retain the maximum amount of flexibility for the Administrator consistent with the purposes of the amendment.

Section 121

A. The Committee adopted two amendments to section 121 of the bill. The first amendment adopted by the Committee redesignates subsection (h) of the proposed new CERCLA section 122 as subsection (i) and adds a new subsection (h) which is intended to encourage the participation of federal natural resource trustees in settlement negotiations with potentially responsible parties. H.R. 2817, as reported by the Committee on Energy and Commerce, authorizes EPA to enter into negotiations with potentially responsible parties in order to reach agreements on the cleanup of Superfund sites. This amendment seeks to encourage the participation of natural resource trustees in those negotiations by requiring EPA to notify them of any negotiations relating to sites at which there may be damages to natural resources. The amendment is intended to clarify that federal natural resource trustees may grant releases from liability where the settlement provides for adequate restoration, replacement and protection of the natural resources at the site, assuming, of course, that the waiver is otherwise consistent with their fiduciary responsibilities as natural resource trustees. The amendment also makes clear that only the federal natural resource trustees may grant such releases of liability arising out of damages to natural resources under their trusteeships. By specifying that potentially responsible parties must agree to undertake appropriate actions before obtaining releases from liability, the Committee does not intend to foreclose the necessary flexibility to allow potentially responsible parties themselves to undertake the actions, or to allow such actions to be undertaken by contractors, or in certain circumstances, by the federal resource trustee itself, for so long as the potentially responsibile party agrees to finance and remain accountable for those actions.

B. Section 121 of the bill establishes a new section 122 of CERCLA that authorizes the Administrator of EPA to enter into agreements for the purpose of settling the liability of those deemed responsible under section 107 of CERCLA for damages or other costs resulting from a release or threatened release of a hazardous substance. The second amendment to this section adds a new subsection (j) to the proposed section 112 of CERCLA that makes it clear that the settlement procedures outlined in the new section shall not be applicable to release of hazardous substances from vessels.

This amendment was prompted by the view that new and elaborate procedures for settling liability questions are not necessary with respect to releases from vessels. This is because a release from a vessel usually involves a single liable party, clearly identifiable damages, and clearly established limits on, and defenses to, liability. Releases at facility, on the other hand, often involve multiplicity of responsible parties, uncertainty about the extent of damages, and a substantial potential for disagreement about the appropriate means of allocating the liability among responsible parties.

In the absence of any demonstrated need to create new settlement procedures for releases from vessels, the Committee felt that it would be wise to avoid the potential confusion that might result from making the provisions of the new proposed section 122 applicable to this category of release.

Although the new proposed section 122 would not apply to releases for vessels, the committee encourages the Coast Guard (or other entity conducting settlement negotiations regarding a vessel-source release) to notify the natural resource trustee agencies when settlement negotiations begin, and to encourage the trustees to participate in the negotiations.

Section 125

The Committee adopted a new section 125 of the bill that is intended to establish new liability limits and financial responsibility requirements on ocean incineration vessels. The amendment has three subsections. Subsection (a) adds a new paragraph (33) to section 101 of CERCLA, the definitions section, which defines the term "incineration vessel" as any vessel which carries hazardous substances for the purposes of incinerating such substances, during any period when such substances or their residues are on board.

Subsection (b) adds a set of amendments to subsections (a) and (c) of section 107 of CERCLA, the liability section, that are intended to create a new class of incineration vessels for purposes of the liability limits in section 107. In subsections (a)(3) and (a)(4), the Committee has added the term "incineration to incineration vessels as well as facilities or sites. Similarly, the Committee adopted amendments to subparagraphs (A), (B), and (D) of subsection 107(c)(1) to exempt incineration vessels from the two subsections establishing liability limits for vessels and to include incineration vessels in subsection (D), which pertains to liability limits for facilities not otherwise addressed in subsection (C). The purpose of these amendments is to establish liability limits for ocean incineration vessels which are the same as for land-based incinerators; that is, the total of all costs of response plus $50,000,000 for any damages under Title I of CERCLA.

Subsection (c) adds a new paragraph (2) to subsection 108(a) of CERCLA, the financial responsibility section, that is intended to authorize the Administrator of EPA to require evidence of financial responsibility for incineration vessels as may be appropriate, taking into account the risks posed by the incineration itself and the associated transportation phases of the incineration operation. The evidence of financial responsibility required for incineration vessels under section 108, as amended, should not exceed the evidence of financial responsibility required for land-based incinerators under the Resource Conservation and Recovery Act, nor deviate from the policies established by EPA for comparable applicable financial responsibility requirements under RCRA. Under this amendment, incinerators based on land and at sea would be authorized to demonstrate adequate financial responsibility through insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. Incineration vessels would be included along with all other vessels for purposes of section 114(d) of the existing statute having to do with financial responsibility requirements. Requiring similar levels of financial responsibility on land and at sea will ensure that use of incineration technologies is based upon need and performance rather than upon arbitrary differences in cost superimposed upon the technologies. Conforming amendments to existing paragraphs (1), (2) and (3) are also included.

Section 202

The Committee adopted an amendment to strike section 202 of H.R. 2817. Section 202 would amend Section 301(c)(1) of CERCLA by changing the date required for the promulgation of regulations for the assessment of damages to natural resources caused by a release of oil or hazardous substances. Under Section 202, the date for promulgating the regulations would be changed from December 11, 1982 to a date six months after the enactment of H.R. 2817. The effect of striking this section of the bill will be to retain current law, which requires the promulgation of regulations in 1982.

The Committee is aware that the Department of Interior, which is charged with issuing the damage assessment regulations, has not yet done so. The Department has prepared draft regulations, however, and plans to issue them in two parts, in December, 1985, and April, 1986. The final regulations would be issued four months after publication of the draft regulations. The Department of the Interior is presently operating under an order issued by a United States District Court in New Jersey to promulgate the regulations by the dates listed above. For this reason, the Committee does not believe that any purpose would be served by changing the statutory deadline for issuing the regulations.

The Committee expects the Department of the Interior, as well as others within the Executive branch of the government charged with reviewing the draft regulations prior to their publication, to make certain that the regulations are issued by the dates cited in the Court order.

TITLE V

The final amendment adopted by the Committee creates a new Title V of the bill, consisting essentially of the text of H.R. 1232, the proposed Oil Pollution Liability and Compensation Act. The text is, with three exceptions, the same as that reported by the Committee on Merchant Marine and Fisheries when it reported H.R. 1232 on August 1, 1985 (House Report 99-247, Part I).

The three differences between H.R. 1232 as reported and the new, proposed Title V of H.R. 2817 are minor. First, section and title references are changed appropriately. Second, an auditing provision was deleted in order to conform to the auditing of the Marine Oil Pollution Compensation Fund created by the legislation to the treatment accorded all other wholly-owned government corporations operated by the federal government. Finally, a change was made in the claims provisions of the newly designated Section 507 to permit State governments to have accelerated access to the Trust Fund to seek compensation for cleanup costs incurred by that State as a result of an oil spill.

The following description of Title V is similar to the descriptions of H.R. 1232, as reported by the Committee on Merchant Marine and Fisheries, which is contained in House Report No. 99-247, Pt. I.

TITLE V—COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION

(NOTE.—References to the "Act" in this Section-By-Section are considered to be references to the "Comprehensive Oil Pollution Liability and Compensation Act" contained entirely within Title V, unless the context clearly indicates otherwise.)

Section 500

SHORT TITLE

This section sets forth the short title as the "Comprehensive Oil Pollution Liability and Compensation Act".

Subtitle A—Oil Pollutlion Liability and Compensation

Section 501

DEFINITION

(1) "Corporation" is defined as the Marine Oil Pollution Insurance Corporation established by section 521. This is a wholly owned Government corporation established subject to the direction and supervision of the Secretary of Transportation. The corporation is given the responsibility, under the Act, for administering the Marine Oil Pollution Compensation Fund (the Fund).

(2) "Claim" is the description of a demand for compensation brought directly against a responsible party, a guarantor, or against the fund. It is distinguished from a cause of action, which is a demand for compensation pursued through the judicial system.

(3) "Cleanup costs" may include both the cost of actually removing discharged oil and the cost of measures taken to prevent oil pollution from occurring. These costs are not necessarily restricted to those paid for under the Federal Water Pollution Control Act (FWPCA) or other federal statutes. All costs of "reasonable" measures taken are included. The Committee intends that this provision be interpreted liberally, and that only measures which are clearly extravagant, clearly and predictably ineffectual, frivolous, or grossly out of proportion to the actual or threatened pollution should be excluded. Costs incurred by a state or local government seeking to ameliorate pollution caused by tar balls washing up of a beach for recreational purposes, for example, would ordinarily be included within this definition;

(4) "Discharge" is intended to describe any type of release of oil. It is used in connection with the definition of oil pollution in subsection (17). This definition is intended to have the same meaning as that given in section 311(a)(2) of the Federal Water Pollution Control Act, as amended, although it does not specifically include section 402 point source discharges. It was felt that this was not necessary since the bill excludes lawful discharges. The bill does this by defining oil pollution to be the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful

rate. Since a 402 discharge is lawful, it cannot be considered oil pollution under this Act.

(5) "Facility" is defined in a limited fashion, including oil handling or exploration structures, or groups of structures, located on the outer Continental Shelf or licensed under the Deepwater Port Act. The definition includes all types of units for exploring for, drilling for, producing, or transporting oil from areas leased under the Outer Continental Shelf Lands Act, included pipelines, the definition does not include vessels, and it does not include any facilities located on land or in state water, except for pipeline also located in part on the Outer Continental Shelf or licensed under the Deepwater Port Act.

(6) "Foreign claimant" is a limited class of foreign residents who may assert a claim for damages under the bill. To qualify for a "foreign claimant," the claimant must satisfy all the requirements of section 503(d).

(7) "Guarantor" is a generic term that describes any person, except the responsible party, who provides the evidence of financial responsiblity required for vessels and facilities under section 505. This evidence is to be provided in the form of insurance, surety bonds, or in other forms acceptable to the Secretary.

(8) "Incident" defines the type of event which triggers the designation and advertisement provisions of section 506. "Incident" includes events which directly threaten, as well as those which cause, oil pollution. Depending upon the type of event involved, an incident will trigger the appropriate procedural requirements of section 506, as well as response action under other laws such as the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act of 1974.

(9) "Inland oil barge" is an oil-carrying vessel that is certificated to operate only in the internal waters of the United States. The applicable limitation of liability is found in section 504(b)(1)(C).

(10) "Internal waters of the United States" has been defined to assure that oil barges that normally operate on the internal waters of the United States but which also on occasion proceed on waters which are a part of the Gulf Intracoastal Waterway, outside the baseline from which the territorial sea is measured, will be considered, for the purposes of this Act, to be inland oil barges.

(11) "Lessee" is defined as a person holding a leasehold interest granted or maintained under the Outer Continental Shelf Lands Act. For purposes of assessing liability for pollution incidents under this Act, the lessee is considered to be a responsible party for facilities located within the area of his lease.

(12) "Licensee' is defined as a person holding a license issued under the Deepwater Port Act of 1974. The licensee would be considered the responsible party with respect to any oil discharges from a deepwater port.

(13) "Mobile offshore drilling unit" (MODU) is defined for the purpose of explaining the allocation of liability between the responsible party for a MODU and a lessee. This becomes important in the event of an oil pollution incident involving the operation of a MODU on an area laased under the Outer Continental Shelf Lands Act. The allocation of liability in these circumstances is described in section 504(a)(2).

(14) "Natural resouces" refers to living and nonliving resources, whether or not possessing commercial value, which are within the jurisdiction of the United States government, or any state, local or foreign government.

(15) "Navigable waters" is significant for purposes of the definition of "oil pollution" found in section 501(17). The definition of "navigable waters" does not reflect the traditional admiralty concept. The definition has been taken from section 502(7) of the Federal Water Pollution Control Act, as amended, with the intent that judicial interpretations made under that Act would be applicable to this legislation. Therefore, all those waters subject to section 311, Federal Water Pollution Control Act jurisdiction are included in this definition. This conformance should prevent litigation over issues that have already been resolved.

(16) "Oil" encompasses all petroleum, including fractions and residues of crude oil. It does not include nonpetroleum oil or products, such as a whale or vegetable oil, nor does it include gases such as butane or propane, which do not pose any threat of causing oil pollution.

(17) "Oil Pollution" is one of the more important defintions in the Act. Claims may be asserted for damages under this Act, only if the damages resulted from oil pollution or from the substantial threat of oil pollution.

The definition is in three parts. In the first part, oil, must have been discharged from a vessel or facility in unlawful quantities. With respect to territorial waters, this means that there would have to be a violation of section 311(b)(3) of FWPCA. That Act, as implemented by regulations issued thereunder, essentially prohibits the discharge of oil which results in an oil sheen. Since such a discharge would be an unlawful quantity under that Act, it would constitute oil pollution under the definition of this Act. On the other hand, a discharge of oil into the contiguous zone, by a vessel subject to Article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, as amended, might well not constitute oil pollution under this part, since Article IV allows certain discharges under specified conditions. These permissible discharges, being lawful, do not constitute oil pollution under clause (A), although they may constitute oil pollution under clause B(iii).

Unlawful discharge of oil from a vessel or facility into the navigable waters of the United States would be oil pollution if it has been discharged in violation of the regulations and standards promulgated under FWPCA. It is likely, of course, that discharges of oil will occur which are unlawful under FWPCA, but which will not be considered oil pollution under this Act. For example, discharges from an oil terminal located on land would not be from a "facility", as defined by this Act, and therefore could not cause "oil pollution" in the navigable waters under this Act.

The second part of the definition relates to locations seaward of the territorial limits. Under this part, the presence of oil on the high seas constitutes oil pollution if it results from Outer Continental Shelf Lands Act activities or deepwater port operations; causes injury to resources belonging to, appertaining to, or under the exclusive management authority of the United States; or results from ship movements of Trans-Alaskan pipeline oil to a United States port. The presence of oil in these cases may constitute oil pollution even though it is not specifically "unlawful" under any other statute.

Under the third part of the definition, oil pollution also may involve discharges of oil onto the territorial sea, internal waters or adjacent shoreline of a foreign country where the elements of section 503(d) are satisfied. That provision generally permits a claim to be asserted by a foreign resident where the discharge originated in United States navigable waters or from certain offshore activities under U.S. control, with an ensuing spread to foreign waters and where reciprocal rights are provided to United States residents by the claimant's country. Therefore, "oil pollution" would not include discharges which originated outside United States navigable waters other than OCSLA or U.S.-licensed deepwater port operations. By way of illustration, an unlawful discharge in United States navigable water off the coast of Maine, which drifted into the territorial sea of Canada off the coast of New Brunswick, would constitute oil pollution provided that the claimant had standing to assert a claim under section 503(d).

The definition does not include natural seepage of oil from the earth. The Fund would therefore not be liable for damages caused by the presence of oil known to have resulted from natural seepage. The Committee intends that this exception be interpreted in a narrow fashion. If significant quantities of oil from sources unknown should appear anywhere in the waters of the United States, the Committee expects that the presumption will be that the oil has been discharged from a vessel or facility, and that compensation for damages will be available from the Fund. This expectation is based on the sophisticated methods now available to analyze oil and identify its source. The Fund would be able to deny liability only if there is convincing evidence that the oil in question resulted from natural seepage, or from other potential pollution sources not included within the scope of this Act.

(18) "Operator" is one of the classes of responsible persons subject to liability under the Act. Operators of vessels do not include those individuals who are not totally responsible for the operation of a vessel. To fall within the definition, the individual must have assumed the full range of operational responsibility. For example, a pilot might be in charge of navigation of a vessel for a short duration, yet he does not meet the definition of "operator", since he neither mans nor supplies the vessel.

(19) "Outer Continental Shelf" is defined in the same manner as in the Outer Continental Shelf Lands Act.

(20) "Owner" is defined to include not only those persons who hold title to a vessel or pipeline but those who, in the absence of holding a title, possess some equivalent evidence of ownership. It does not include certain persons possessing indicia of ownership (such as a financial institution) who, without participating in the management or operation of a vessel or pipeline, hold title either in order to secure a loan or in connection with a lease financing arrangement under the appropriate laws, rules, or regulations.

For example, a financial institution which held title primarily to secure a loan but also received tax benefits as the result of holding title would not be an "owner" as long as it did not participate in the management or operation of the vessel or pipeline.

For purposes of assessing liability under this Act, the owner, along with the operator, is considered to be the responsible party for oil discharges from any vessel or pipeline that he owns.

(21) "Permittee" means a person entitled pursuant to the Outer Continental Shelf Lands Act to conduct geological exploration on the Outer Continental Shelf.

(22) "Person" includes individuals and business associations and groups, as well as all other commercial, legal or governmental entities.

(23) "Public vessel" is a subclass of vessel that performs governmental functions for federal, state, or local units of government. It is a significant definition for purposes of ascertaining liability. Public vessels are exempted from the liability provisions in section 504(a) and preexisting law continues to apply with respect to the liability of such vessels. A victim of oil pollution caused by a public vessel often will encounter a sovereign immnity defense, and thus must seek relief against the Fund. A vessel owned and operated by a governmental entity, however, is not necessarily a public vessel under this definition. A government-owned or operated vessel engaged in commercial service, is not included in the definition and would be subject to the provisions of this Act. "Commercial service" means all types of trade or business involving the transportation of goods or persons, but excludes those vessels performing service as combatant vessels.

(24) "Removal costs" are those costs incurred in cleaning up or arresting the threat of oil pollution. There are two classes of removal costs: Those cleanup costs defined in subsection (3), and those costs incurred by the federal government under the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act. Removal costs are recoverable under section 503(a). The type of removal costs incurred under any of these specific three Acts are compensable out of the fund, regardless of the existence of any defenses that could be asserted by the fund against other types of claims. This is provided for in section 504(d)(2). The other type of removal costs, "cleanup costs", are subject to the defenses that may be asserted by the fund under section 504(d)(2).

(25) "Responsible party" is one of the most important definitions in the Act. The responsible party is the term used to identify the person or persons who may themselves, or whose guarantors, may be held liable for damages caused by oil pollution. It is a term which may include more than one person. For example, it encompasses both the owner and operator of a vessel or pipeline. With respect to a deepwater port, the responsible party will be the licensee.

With respect to a facility (other than a deepwater port or pipeline), the responsible party normally will be the lessee or permittee of the area in which such facility is located. However, the holder of right of use or easement granted pursuant to OCSLA for the construction or maintenance of a facility will be the responsible party for pollution caused by that facility when such holder is a different party from the lessee or permittee of the area in which the facility is located. Where more than one party holds an interest, other than a security interest, in a lease, permit or right of use or easement all such parties will, as a unit, be considered the responsible party and under Section 504 of this Act be considered strictly, jointly and severally liable.

With respect to a MODU which is being used as a facility and when the pollution originates on or above the surface of the water, the responsible party will be the owner and operator of the MODU. Under certain circumstances, the lessee or permittee for whom such owner and operator is conducting drilling operations will also be the responsible party for MODU operations. For example, should an oil polluting event cause $12 million in cleanup and damage costs, and the MODU owner or operator is subject to a maximum liability of $6 million (due to the size of the MODU involved), the lessee or permittee for whom such owner or operator is conducting operations would be responsible for the additional $6 million in costs. The proportional liability of these parties is set forth in Section 504(a)(2).

(26) "Secretary" refers to the Secretary of Transportation.

(27) "Ship" is a subclass of vessel that carries oil in bulk as cargo, or in residue from cargo. Cargo refers to oil being transported as merchandise from one place to another, including oil owned by the ship owner or operator. Residue is intended to assure that an oil tank vessel whether partially loaded, in ballast, or containing residue of a recently discharged cargo of oil, continues to be treated as a ship. When a tanker has been cleaned and is ready to carry bulk cargoes such as grain, ore, or coal, it would be subject to the provisions applicable to vessels other than ships. "Ship" includes self-propelled vessels and those non-self-propelled vessels that are certificated to operate outside the "internal waters of the United States". Non-self-propelled oil-carrying barges operating solely within internal waters are not classified as ships. The definition is significant in terms of the provisions of section 504(b)(1) relating to limitation of liability.

(28) "United States" and "State" are used in their broadest sense to cover not only the several states, but various other specified U.S. government jurisdictions.

(29) "United States claimant" describes the broadest class of claimants that may assert claims for damages under section 503(a), and applies to any resident of the "United States" as that term is defined in subsection (28).

(30) The word "vessel" is given the broadest definition possible. The intent is to exclude no watercraft from the scope of the definition. Vessels are one of the two major classes of oil handling devices, the responsible parties for which are subject to liability under the Act (the other being "facilities"). The definition is consistent with that found in section 3 of title 1, U.S. Code.

Section 502

This section sets out the relationship between the domestic oil pollution liability and compensation scheme established in Subtitle A of this Title, and the international scheme to be implemented by Subtitle D.

The domestic regime is to be applicable, according to the terms of Subtitle A, to all oil pollution incidents until the 1984 Protocols to both the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution (FC) have entered into force for the United States. On and after that date, the two Conventions shall apply, as long as both remain in force, to damages compensable under those Conventions.

The CLC was drafted in 1969 and the FC in 1971. The United States is the only major maritime country which has failed to ratify either Convention. It has been the judgment of Congress, in the past, that neither Convention adequately serves the United States interest in a comprehensive and equitable oil pollution liability and compensation system.

The International Maritime Organization (IMO) met in May, 1984, to consider amendments to the two Conventions. A series of amendments were adopted to 1) expand the definition of ships covered by the CLC to include unladen tankers; 2) increase the limit on shipowner liability under the CLC, including the establishment of a floor on liability for smaller vessels; 3) increase the limit on liability of the Fund under the FC; 4) devise a mechanism for periodically updating liability limits under the FC and the CLC; 5) assure that costs incurred while taking measures to prevent an oil discharge would be recoverable under the Conventions; and 6) expand the geographical scope of the Conventions' coverage to include damage to all areas subject to the exclusive management authority of the contracting states.

These amendments were consistent with recommendations made by seven Members of this Committee, and of the House Committee on Public Works and Transportation, in a letter sent to Admiral James Gracey, Commandant of the Coast Guard, on February 23, 1983. On June 18, 1985, Secretary of Transportation Elizabeth Dole submitted a letter to the Committee reaffirming the administration's support for both Protocols and the provisions in this title, and stating that she and Secretary of State Shultz have agreed that "the ratification process with respect to the 1984 protocols should proceed without delay." Accordingly, they are recommending that the protocols be submitted promptly to the Senate for its advice and consent.

The purpose of including language in this legislation to implement the CLC and the FC is to provide the Senate with additional guidance in its consideration of the Protocols. By including the implementing language in this title, it will be possible to envision in a detailed manner the extent to which the Protocols could be folded into a comprehensive international, national, and state framework of oil pollution liability and compensation law. Another purpose of including the language is to facilitate the rapid implementation of the Protocols should Senate advice and consent be forthcoming.

Section 503

DAMAGES AND CLAIMANTS

This section enumerates the damages which may be claimed under the Act. Any person who receives compensation for damages for economic loss pursuant to this Act shall be precluded from recovering compensation for the same damages pursuant to any other state or federal law. Any person who receives compensation for damages for economic loss pursuant to any other federal or state law shall be precluded from receiving compensation for the same damages under this Act.

It is important to note that the damages enumerated in subsection (a) may not, in all instances, be available to all claimants. Subsection (a) must be read in conjunction with subsections (b), (c), and (d), which describe those persons who have standing to bring the claims for the various damages that are set out in subsection (a).

"Removal costs" is a recoverable economic loss, as provided under subsection (a)(1), and includes "cleanup costs". Subsection (b)(1) provides that any claimant may recover removal costs. To create an incentive for maximum participation in cleaning up, foreign claimants are permitted to recover these costs, even if the conditions imposed by subsection (d) are not met. The responsible party of a vessel or facility involved in an oil pollution incident have limited standing. The responsible party who undertakes the cleanup of an oil spill may assert a claim against the fund for the cost of such an undertaking, either if he has a defense to liability under section 504(c) or if he is entitled to a limitation of liability under section 504(b). In the latter case, "his right to compensation is restricted" to the excess cost incurred above the limitation to which he is entitled.

The purpose of this provision in relation to responsible parties is two-fold. First, it removes any disincentive to undertaking the cleanup, based on the liability issue; and secondly, it serves as an encouragement to continue cleanup activities, even after the limitation of liability has been reached, by affording a basis for compensation of the cost of cleanup in excess of the limitation. A guarantor would have the same rights, as subrogee to the responsible party.

Subsection (a)(2) permits recovery for economic loss suffered due to injury to, or destruction of, real or personal property. Pursuant to subsection (c), any United States claimant may seek compensation for this category of loss.

Damages for injury to and destruction of natural resources under subsection (a)(3) may be claimed only by the President, as trustee of those natural resources over which the Federal government has jurisdiction, or by the governor of a State for natural resources under its jurisdiction. The jurisdiction of the Federal government specified includes resources over which it has exclusive management authority, such as those covered by the Fishery Conservation and Management Act of 1976.

The Committee intends that the federal trustees of natural resources designated in the National Contingency Plan (issued pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980) or any subsequent revision also shall act as federal trustee for natural resources under this bill.

The Committee also intends that federal trustees for natural resources will use the damage assessment regulations promulgated under section 301(c) of the Compensation, and Liability Act of 1980.

A determination of natural resource damages based upon these regulations shall be given the same effect in judicial or Fund proceedings under this bill as a similar determination is given pursuant to CERCLA.

Compensation paid for damages under subsection (a)(3) must be used to restore the damaged natural resource, to acquire similar resources, or to reimburse the trustee agency for costs of assessing those damages and planning for the restoration or replacement of the resources.

A separate theory of recovery in connection with natural resources is provided under section (a)(4) for those parties who are unable to make subsistence use of natural resources damaged by oil pollution. Standing for claiming such a loss is conferred on any United States claimant by subsection (c).

The provisions of subsection (a)(5) allow recovery for loss of earnings due to injury to property or natural resources. In order to acquire standing to bring a claim under subsection (c)(3) for lost earnings, the claimant must derive at least 25 percent of his earnings from economic activity which utilizes the injured property or natural resources. The claimant need not be the owner of the property injured in order to have standing to bring a claim for lost earnings, as is required by common law. This means, for example, that a worker at a coastal hotel might have standing to bring a claim for damages, even though he owns no property which has been injured by oil pollution. In addition, loss of earnings from seasonal activities is also included.

When injury to real or personal property occurs and the injury causes a reduction in tax revenue derived from that property, a State or local jurisdiction is given standing under subsection (c)(4) to assert a claim for one year's loss of revenue, attributable to such reduction.

Under subsection (d), foreign claimants, as defined in section 501(6), are given rights comparable to United States claimants, provided they meet certain conditions. First, it should be borne in mind that oil pollution, as defined in section 501(17)(c), has a particular meaning for foreign claimants. Only oil pollution in the territorial sea, internal waters or adjacent shoreline of the foreign country gives rise to a claim. Furthermore, under this subsection, there are four prerequisites to assertion of a claim by a foreigner. All four prerequisites must be met.

Where oil pollution occurs in a foreign country, the claimant must be a resident of the country where the oil pollution occurred. The claimant must not have been compensated through some other means for his loss. The discharge which resulted in oil pollution must have occurred from a vessel located in the United States navigable waters or from certain activities under control of the United States. Lastly, the recovery must be authorized by treaty or executive agreement, or the country involved must provide a comparable remedy for United States claimants in similar situations.

In the case of oil being transported from the Trans-Alaska Pipeline to a port in the United States, a Canadian resident may assert a claim under specified, less stringent conditions. This provision substitutes for a similar provision in section 204(c) of the Trans-

Alaska Pipeline Authorization Act, repealed by section 542 of this Act.

Subsection (e) authorizes the Attorney General to pursue a claim on behalf of a group of claimants. This clause is designed to expedite the settlement of claims under section 507. The Committee does not intend subsections (e) or (f) to prevent a person from presenting a claim for his own damages to the responsible party at any time.

Section 504

LIABILITY

Subsection (a) establishes the basic statutory theory of liability and creates a statutory cause of action for damages listed in section 503. The responsible party for a vessel (other than a public vessel) or a facility which is the source of, or which poses a substantial threat of, oil pollution shall be subject to joint, several and strict liability for the damages described in section 503.

To discourage frivolous claims, liability in the event of a substantive threat of oil pollution is only created in circumstances justifying the incurrence of removal costs described in section 101(24)(A). Those costs are triggered by actions taken pursuant to the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act. Thus, liability might exist if a vessel were aground and actions were taken to prevent the vessel from breaking up and spilling oil. No liability would result, however, from the presence of tanker traffic alongside waterfront property resulting in reduced property values because of the potential for an oil spill.

Where the responsible party is innocent of fault he may limit the imposed liability to specified levels. The amounts subject to limitation include the liability under subsection (a) and any removal costs incurred by or on behalf of the responsible party. The additional language referring to removal costs is included to make it clear that, if a responsible party spends money on removal costs for his own spill, that amount will be included as a part of the total liability to which he is subjected. This provision will provide an incentive for the responsible party to immediately begin cleanup activities which should result in a reduction of other potential damage.

For vessels carrying oil in bulk as cargo, other than inland oil barges, the liability is limited to the greater of $3,000,000 or $420 per gross ton (up to a maximum of $60,000,000). In case of inland oil barges, the liability is $150,000 or $150 per gross ton, whichever is greater. In the case of other vessels, the liability is limited to $500,000 or $300 per gross ton, whichever is greater.

For facilities, the limit on liability is $50,000,000.

This section contains several provisions apportioning liability among various parties engaged in activities pursuant to the Outer Continental Shelf Lands Act. Paragraph (a)(2)(A) sets forth the general rule that the responsible party for a MODU shall be liable for oil pollution incidents where the source of the pollution is above the surface of the water. Under these circumstances, the MODU would be deemed to be a ship for purposes of this title, and would possess the liability limit of a ship. Paragraph (a)(2)(B) provides that the responsible party for facilities located in the area shall be liable for the costs stemming from such an incident to the extent that the damages exceed the liability imposed upon the responsible party of the MODU. Finally, paragraph (a)(2)(C) provides that both the responsible party for the MODU and the responsible party for the facilities located in the area shall be jointly, strictly and severally liable for all damages, where both such parties have been guilty of certain listed actions which throughout this section prevent a responsible party from invoking a limit on liability.

Those actions, which apply to all responsible parties, are spelled out in subsection (b). No limitation to liability is available when the incident is caused primarily by gross negligence or willful misconduct within the "privity or knowledge" of the responsible party. The test of "privity or knowledge" is that applied under admiralty law. Under that test, acts are committed within the "privity or knowledge" when committed by persons to whom full control and authority have been given, such as in the case of a corporation, by the designation of a "managing officer". Acts of employees to whom general authority has not been designated are not attributable as within "privity or knowledge" in the absence of proof of actual knowledge. The knowledge of the "managing officer" is imputed to the responsible party.

Many violations of federal regulations would only be considered ordinary negligence and not serve as a bar to the limitation of liability under this Act; however, an oil spill incident caused primarily by an intentional violation within the privity or knowledge of a responsible party of applicable safety, construction, or operating regulations of the United States, and which violation was committed with knowledge that an incident would probably result, would constitute willful or gross negligence as contained in Sections 504(a)(2)(C)(i) and 504(b)(2)(A) of this Act.

In addition, limitation of liability is not available when, after an incident, the responsible party fails to report the incident or refuses his reasonable participation in the ensuing cleanup activities, as may be requested by the responsible Federal official. The term "responsible Federal official" refers to that official designate, pursuant to statute or regulation, such as the National Contingency Plan, as being the coordinator of pertinent Federal cleanup activities. Failure on the part of a responsible party to undertake cleanup activities due to a lack of financial ability to do so shall not constitute a failure to act reasonably under this paragraph, provided the appropriate federal officials are promptly informed of the situation so that other cleanup options may be explored.

Subsection (c) exonerates the responsible party from the liability imposed by subsection (a), provided that the responsible party is able to prove that the incident resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character. The Committee expects that the standard of proof used to determine whether an incident "resulted" from a particular cause leading to a defense to liability will be that of preponderance of the evidence. A responsible party may also escape liability if he can prove the incident was wholly caused by an act or omission of a person other than a responsible party, an employee or agent of a responsible party, or one whose act or omission occurs in connection with a contractual relationship with a responsible party. 5

The defense for the exceptional natural phenomenon is similar to, but more limited in scope than, the traditional "act of God" defense. It has three elements: the natural phenomenon must be exceptional, inevitable, and irresistible. Proof of all three elements is required for successful assertion of the defense. The "act of God" defense is more nebulous. and many occurrences asserted as "acts of God" would not qualify as "exceptional natural phenomenon". For example, a major hurricane may be an "act of God", but in an area (and at a time) where a hurricane should not be unexpected, it would not qualify as a "phenomenon of exceptional character".

The responsible party is exonerated as to a particular claimant when the claimant's gross negligence or willful misconduct contributed either to the incident or to the economic loss; a partial defense is provided to the extent that the incident or economic loss is caused by the simple negligence of that claimant. These two defenses, unlike the others, apply to acts or omissions relating to the economic loss as well as the incident itself. Thus, if a particular claimant does not cause the incident in any way, he may still be barred, totally or partially, from recovery, if his own acts or omissions cause the economic loss. An example is a fisherman who, ignoring warnings of the occurrence of an oil spill, deliberately goes out to fish in the area of the spill and has his gear damaged as a consequence.

Subsection (d) sets out the basis liability of the Corporation. The specific procedure for asserting claims against the fund is outlined in section 507, whereby the fund serves to provide compensation in those instances where claims are not fully satisfied by payment from a responsible party, or where the responsible party cannot be identified or is not liable under the Act.

Paragraph (2) of subsection (d) exonerates the Corporation from liability only when the incident is caused wholly by an act of war, hostilities, civil war, or insurrection, or, as to a particular claimant, where his gross negligence or willful misconduct contributed to the incident or to his economic loss. Further, as to a particular claimant, the liability of the Corporation is reduced to the extent that the incident or loss is caused by the simple negligence of the claimant.

In addition to the liability for damages, subsection (e) imposes liability on responsible parties and guarantors for interest over and above the limitations of liability invoked under subsection (b). Under subsection (e), the responsible party or guarantor is liable for interest on the amount paid in settlement of a claim, starting from the time when the claim was presented, and running to the time when the claim is paid. However, when the responsible party or guarantor offers an amount equal to, or in excess of, the amount finally settled upon, and such an offer is made within 60 days of the date upon which the claim was presented or of the date the advertising was commenced, pursuant to section 506, there is no liability for any interest other than of the period between the time that the offer was accepted and the time the claim was paid. For a similar offer made after the pertinent 60-day period, the responsible party or guarantor will, in addition be liable for interest for the period between the time the claim was asserted and the time the offer was made. The interest involved under this subsection is to be calculated at the commercial rates specified in paragraph (3).

Subsection (f)(1) provides that a responsible party may not transfer the liability imposed under this section to any other person. This subsection does not, or course, prevent any person from serving as guarantor, pursuant to this title, nor would it prevent a responsible party who is held liable from taking appropriate legal action against any person whose negligence caused or contributed to the incident which resulted in that liability.

Subsection (f)(2) makes it clear that the prohibition in (f)(1) does not preclude agreements in which another person may agree to pay for all or part of the liability to which a responsible party may be subject.

Subsection (g) preserves to responsible parties subject to liability under this Act, all right which they may have, under any other law, against any third party. This provision insures that a responsible party will not be barred from recovering against a third party whose negligence actually caused the incident which resulted in liability being imposed under this Act. The measure of recovery against such a third party would have reference to the sums paid out under this Act as a foreseeable consequence of the negligent conduct of the third party.

When a guarantor is involved, he would succeed, through subrogation, to the rights of the responsible party for whom he provided evidence of financial responsibility.

Subsection (h) makes it clear that this section will supersede all other laws relating to liability and limits to liability, to the extent they conflict with this section. The Liability Act of 1851 is an example of a law which would be superseded in many instances by the provisions of this section.

Section 505

FINANCIAL RESPONSIBILITY

Another major feature of the Act is the requirement that there be adequate funds immediately available to compensate injured parties. Since the primary responsibility to compensate victims of oil pollution rests with a party responsible for a pollution source, he is generally required to establish his capability to meet his potential liability.

Subsection (a)(1) imposes on the responsible parties of vessels over 300 gross tons the requirement that they carry insurance, have surety bonds, or qualify as selfinsurers or have other evidence of financial responsibility to meet their liability up to the level of the limitation available under section 504(b). This requirement to maintain evidence of financial responsibility is imposed on all such vessels (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel), including foreign vessels using our navigable waters or calling at offshore facilities subject to the jurisdiction of the United States, as covered by the Act. Each such vessel must carry on board at all times a certificate, issued by the appropriate U.S. government agency, evidencing financial responsibility. If a responsible party has more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability limit of the largest of such vessels.

Paragraphs (2) and (3) provides the necessary sanctions for enforcing the financial responsibility requirements. Failure to comply with subsection (a)(1) will result in a termination of the right to engage in trade by triggering a refusal of necessary clearances by the Secretary of the Treasury under Customs laws, and may result in the denial of entry of detention of noncomplying vessels by the Secretary of Transportation.

Comparable requirements to maintain evidence of financial responsibility, sufficient to meet the liability imposed under section 504(b), are placed on the responsible parties for facilities. All facilities, as defined in section 501, must establish the necessary evidence of financial responsibility. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

Failure to meet the requirements of financial responsibility subjects that person to the civil penalty provided in section 511.

In order to provide claimants with a full range of options for pursuing their claims, subsection (d) authorizes direct action against anyone providing financial responsibility, as required by this section, for a responsible party. The person providing financial responsibility can assert rights and defenses that the responsible party could have asserted, and he can invoke the additional defense that the responsible party caused the incident through willful misconduct. No other defenses can be invoked by the guarantor. The effect of limiting the guarantor's defenses is that the claimant does not become involved in collateral disputes between the responsible party and the guarantor. Further, the purpose of establishing financial responsibility is to insure that innocent victims will be compensated and the guarantor in providing evidence of financial responsibility declares that he is available under all circumstances to provide that compensation unless a specific exemption is provided.

Subsection (e) modifies the preceding subsection to make it clear that the liability of the guarantor under this subtitle shall be limited to the amount that guarantor has provided as evidence of financial responsibility under this subtitle. This paragraph also includes a clarifying sentence, making it clear that this modification of paragraph (d) should not be construed to limit the liability of a guarantor to a responsible party for negotiating in bad faith the settlement of any claim. The guarantor's liability, in this sense, may exist as the result of statutory, contractual, or common law precepts unaffected by this subtitle.

In order to avoid undue administrative burdens, the Committee expects that wherever possible the regulations regarding financial responsibility for vessels will be consolidated with those under other federal statutes. In this manner, only one certificate of financial responsibility would be required for vessels under all statutes to meet the requirements for financial responsibility not only for the statutes consolidated by this Act but other pollution laws such as the FWPCA and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Section 506

DESIGNATION AND ADVERTISEMENT

This section sets out the procedure for claims that arise from an oil pollution incident. The first step in the process is the dissemination of information about the incident. The first person likely to have knowledge of an oil pollution incident is the person immediately responsible for the operation of the vessel or facility. Thus, the person in charge, or employer of such person in charge, must, under existing provisions of the FWPCA, immediately notify the Secretary of Transportation of an oil pollution incident. Failure to give that notice subjects the person to the criminal penalty provided for in that law.

Upon receiving information from the person in charge or from any other source, the Secretary, under subsection (a), initiates the claims process by designating the source of the oil pollution incident and by notifying the responsible party and guarantor involved of the designation. The source designation is important, because the responsible party and guarantor of the designated source will incur certain responsibilities under subsection (b), if, within five days, he does not deny the Secretary's designation.

The Secretary is required to designate the source of the oil pollution "where possible and appropriate". This means that there may be some instances where it would not be appropriate for the Secretary to designate a pollution source and, by so doing, to set in motion the advertising requirements of this section. Those instances would occur when the nature of the pollution incident is such that, in the judgment of the Secretary, there is no possibility that any damages from that pollution will be sustained by any potential claimant.

Subsection (b) requires the responsible party or guarantor of a designated source to initiate advertisement of the designation and of the procedures by which claims may be asserted. The failure to deny a designation does not preclude a later denial of liability. It merely makes the responsible party or guarantor of the designated source responsible for setting into motion the applicable claims procedure.

Failure to carry out the advertisement properly may result in the Corporation undertaking that task, at the expense of the responsibile party or guarantor.

Where there has been no denial of designation and the responsible party or guarantor advertises properly, claims may be asserted against them under this title. The purpose of subsection (c) is to provide for those instances where the Corporation must notify potential claimants of the procedures by which claims may be brought directly against the fund. Those instances are situations where the responsible party and, where applicable, the guarantor of the designated source have all denied the designation, where the Secretary has determined the source of the incident was a public vessel (as defined in section 501(23)), or where the source of the incident is unknown.

Section 507

CLAIMS SETTLEMENT

Economic loss claimed under section 503 may be compensated by payment from a responsible party or guarantor, or from the fund. Subsection (a) provides that claims shall be presented directly to the responsible party, except in those situations described in subsection (b). In accordance with subsection (b), claims shall be presented directly to the fund where the Secretary has advertised the claims procedure under section 506(b). This would occur under three circumstances: (1) where the responsible party and guarantor all deny the source designation made by the Secretary; (2) where the discharge was from a public vessel; or (3) where the source of the discharge is unknown. Claims may also be asserted directly against the fund by the responsible party of the designated source if he qualifies under the standing provisions of section 503(b)(1). This means a responsible party may assert claim for removal costs under section 503(a)(1) directly against the fund, either where he has successfully asserted a defense to liability or where he is claiming removal costs which, taken with other claims, are in excess of his limitation of liability. In addition, the governor of a State may also present a claim under this subsection for cleanup costs incurred by that State.

Subsections (c) and (d) provide for a second means of obtaining compensation. Subsection (c) allows for claims against the fund where attempts to reach a settlement with the responsible party or guarantor were unsuccessful. The preconditions for going to this second means of compensation are: (1) the denial of all liability for the claims by the person to whom the claim was presented; or (2) the passage of 180 days after presentation of the claim without any settlement, whichever occurs first. At this point, the claimant may elect to commence an action in court but once having decided to pursue the claim in court, the claimant cannot come back and assert his claim against the fund.

Subsection (d) also permits a claim against the fund in those instances where claimants are not adequately compensated by the responsible party or guarantor. Failure to receive full compensation could occur for a number of reasons. First, the responsible party or guarantor may have successfully invoked his limitation of liability under section 504(b) and the claim may exceed that limitation. The balance would be recoverable against the funds. For some other reason, such as insolvency, the responsible party or guarantor may not be able to satisfy all claims. Uncompensated claims could, therefore, be brought against the fund which serves as a backup for such situations.

Subsection (e) provides for regulations by the Corporation to prescribe documents to be transmitted to the fund in support of a claim which has first been presented against a spiller and is subsequently presented to the fund.

Subsection (f) mandates the Corporation to establish procedures and standards for the prompt appraisal and settlement of claims against the Corporation, including claims submitted by the governor of a State for cleanup costs under subsection (b). Since the primary purpose of this Act is to guarantee the claimants will receive rapid and equitable compensation for any economic loss suffered as the result of an oil spill, the Committee expects that the claims settlement procedures established by the Corporation will be formulated with this purpose in mind. Particular care should be taken to avoid unnecessary procedural delays or overly complicated bureaucratic processes. Claimants should be afforded from the beginning a clear idea of their rights and obligations, and the administrative process established should recognize that severe hardships may be engendered for some claimants if there are delays in the settlement of claims.

Subsection (g) authorizes the Corporation to use the facilities and services of private insurance and claims adjusting organizations or State agencies in the processing of claims. The Committee does not expect the Coporation to maintain a large permanent staff of claims adjusters. The workload is likely to vary from time to time, and there is ample expertise elsewhere. The Corporation is strongly encouraged, in particular, to make use of the expertise which exists in this field in many of the state agencies which presently administer oil spill liability and compensation funds.

Finally, this subsection would permit the Corporation to use federal personnel, on a reimbursable basis, to process claims against the Corporation. It is anticipated that this authority would only be used in extraordinary or unusual situations in which other assistance for settling claims in a timely and equitable mannner is not available.

Subsection (h) clarifies that a claimant, or any other person who can meet the appropriate test for legal standing to sue, can obtain judicial review of the final determination of the Corporation with respect to a claim. Such a lawsuit may be brought only in a U.S. District Court, and must be filed within 30 days after the Corporation issues notice of its final determination. The lawsuit can be brought in the U.S. District Court for the district in which the claimant resides, and in the districts described in section 509(b). The standard of review to be applied by the court is the same standard usually employed to review actions of other federal agencies.

Subsection (i) requires both plaintiffs and defendants to provide the Corporation with copies of complaints and initial pleadings. The Corporation may intervene as a party as a matter of right, but shall be dismissed from an action to the extent that the responsible party or guarantor admits liability. Receipt of proper notice (as specified in subsection (a)(4)) by the fund of an action shall give res judicata type effect to any judgment, even if the Corporation chooses not to become a party. However, the Corporation has the right to reopen the case within certain time limits if the Corporation did not receive timely notice of an issue affecting the liability of the Corporation as provided in this subsection. The sanction imposed on a plaintiff or a defendant for failure to provide a copy of the complaint and initial answer to the Corporation is, in the case of a defendant's failure, a loss of limitation of liability to which the defendant would otherwise be entitled under section 504(b) and, in the case of the plaintiff's failure, the loss of the plaintiff's right to recovery from the fund for amounts not paid by the defendant.

Subsection (j) allows the plaintiff to join the responsible party or guarantor in an action brought against the Corporation, and the Corporation has a right to implead any other person who might be liable under the Act.

The statute of limitations for presenting claims or maintaining causes of action under this Act is set out in subsection (k). The claimant has three years after discovering an economic lost, described in section 503, to assert his claim. There are instances where it may take some time to discover economic loss resulting from oil pollution; hence, a claimant is given a generous amount of time within which to assert his claim. In order to allow for a final resolution of claims, however, an outside limit is placed on the assertion of a claim—six years after the date of the incident which resulted in the loss. The use of this type of statute of limitations permits enough passage of time to allow discovery of long-term loss caused by the oil pollution; yet the outer limit of six years prevents the assertion of stale claims.

Section 508

SUBROGATION

This Section sets out rules of procedures that shall apply in the case of actions brought in Court.

Subsection (a) provides subrogation for anyone who compensates a claimant for an economic loss compensable under section 503. This means that, if the Corporation pays a claimant for damages asserted under section 503, then the Corporation will stand in the shoes of that claimant and may assert any rights that the claimant has under the Act. Very often, this will mean that the Corporation will pay off a claim that is asserted against a discharger, and it will then be up to the Corporation to negotiate a settlement with the discharger or to litigate the claim. The result is to relieve a private claimant from protracted negotiations and litigation with the discharger, and thereby expedite the compensation of an injured claimant.

Subsection (b) sets out the specific items that the Corporation may recover against a responsible party or guarantor. The recoverable items depend on how the responsible party or guarantor responded to the claim.

The first class of responsible parties and guarantors are those who either deny designation or who deny liability. If the Corporation proceeds against such parties, for compensation paid to claimants, those parties cannot contest the amount involved, except to the extent that it exceeds the limitation of liability available under section 504(b). Implicit in the Corporation's status as a subrogee is the defendant's right to assert against the fund any defense that he could have asserted against the claimant, pursuant to section 504(c).

Such defendants are also liable for interest for the period from the time the claim was initially presented to the defendant by the claimant, to the time that the Corporation is paid by the defendant. Excluded from the interest liability is the period, if any, from the time the claimant receives an offer from the Corporation of the amount finally paid, to the time when the Corporation actually paid the claimant. Thus, the defendant is not penalized for the delay by the claimant in accepting the settlement offer of the Corporation. The defendant must also pay costs incurred by the Corporation, both in the proceeding by the Corporation against the defendant and in the processing of the claimant's claim against the Corporation.

The second class of defendants consists of those who negotiated with the claimant but who were unable to reach a settlement within the 180 day period specified in section 507(c)(2). In the case of that type of defendant, where the Corporation pays to the claimant more than the defendant ever offered to the claimant, the defendant must pay what the Corporation paid, subject to the defendant's right to contest the validity of any part of the amount paid which is in excess of the largest amount offered in the settlement to the claimant by the defendant. Such a defendant must also pay the interest that the first class of defendants described above would have to pay and, as to costs, must pay only the costs incurred by the Fund in the proceeding by the Corporation against the defendant.

In the case of the second class of defendants where the Corporation eventually pays an amount less than, or equal to, the largest amount offered by the defendant to the claimant, the Corporation shall recover that amount without reduction. The rationale is that, if the defendant was prepared to pay that amount or more to the claimant, and the Corporation settled, then the defendant has no reason to complain and should pay the full amount.

The Corporation shall also recover interest, running from the time the claim was presented by the claimant to the defendant to the date when the defendant offered the largest amount in satisfaction of the claim. Any such offer made within the specified 60-day period will relieve the defendant of any such interest liability. In any case, the defendant is liable for interest from the date upon which the claim was presented by the Corporation to the defendant to the date upon which the defendant made paymant. A defendant who offers the Corporation an amount equal to that which is finally paid to the Corporation shall not be liable for interest during the period between that offer and the acceptance by the Corporation.

Subsection (f) provides for the distribution of the interest recovered pursuant to subsection (e). The interest recovered from the first class of claimants, those who deny designation or deny liability, shall be paid over to the claimant, but only for the period from the time the claim was first presented by the claimant, to the time the claimant was paid, less the period following the offer of the Corporation which was accepted by the claimant in settlement. This would leave in the Corporation the interest received for the period from the time the claimant was paid by the Corporation, to the time the Corporation was paid by the defendant. The same rule applies for those defendants of the second class who have failed to settle in 60 days, and who have offered less to the claimant than the Corporation eventually paid the claimant.

Costs and interests shall be recovered by the Corporation from responsible parties under subsection (e) without regard to any limitations of liability.

Section 509

JURISDICTION AND VENUE

The United States District Courts shall be the courts of first and exclusive resort for controversies arising under Subtitles A, B, or C of this Title. Claimants need not assert any particular amount in controversy in order for federal jurisdiction to attach, nor do they have to assert diversity of citizenship in order to obtain federal jurisdiction. Actions brought under the Act are federal questions. Under subsection (b), the forum shall be located, unless otherwise provided in the Act, in the district either where the injury occurred or where the defendant resides or is found, or where it has its principal office. The Corporation, for purposes of this section, shall reside in the District of Columbia. Actions seeking judicial review of the final determination of the Corporation with respect to a claim are governed by section 507(g).

Section 510

RELATIONSHIP TO OTHER LAW

Subsection (a)(1) is designed to provide, in conjunction with sections 507(h) and 509, a particular judicial forum for compensation for the economic losses described in section 503(a). Lawsuits to recover damages for the types of losses described in section 503(a) can only be brought in federal court, under this Act. Lawsuits to recover damages for other types of losses may be brought in the appropriate state or federal court under applicable law.

Section (a)(2) provides that no person may be required to make contributions to any funds (other than the Fund set up by this Act) for the purpose of providing a means of compensating for the economic losses specified in section 503. This restriction would apply, on the 180th day after enactment of this Act, to any state which does not have an oil spill compensation fund in effect on that day. This means that a state which is already requiring contributions to state funds for purposes identical to those addressed under this Title would be allowed to continue doing so for three years following the effective date of this section. Such contributions could only be required, however, to the extent they were required under state law on the effective date. States could not require contributions to reflect changes in state law after that time if such changes would result in larger funds or fees than those allowed under state law on the effective date.

The Committee believes that this 3-year "delay", or "grandfather", provision is a reasonable compromise between the oil industry's desire for relief from multiple taxation and the States' desire to maintain existing financial sources for non-appropriation type state funds which address oil pollution matters of great concern to the states' citizens. Delaying preemption of the states' authority to require contributions provides ample time to assure that the new fund is effective and sufficiently responsive to covered oil spills in state waters. If problems arise in implementation of the fund, time will exist in which to make appropriate modifications in the Act, before the states lose their tax authority and states and potential victims begin to lose the protection of the state funds. States which now impose a tax or fee on the oil industry to maintain their existing state funds also may use the three year and 180 day period after enactment of this Act to amend their state laws to provide a new source of financing consistent with section 510(a)(2), as discussed below.

This section (510(a)) is only intended to preempt state laws, and one method of financing state oil pollution compensation funds, which are duplicative of the purposes and functions of this Act. This Act would not eliminate any state oil pollution cleanup or compensation fund in existence on the effective date of section 510, nor would this Act preempt such funds from paying for damages which may be compensated under this Act.

Section 510(a)(2) does restrict the authority of the state in relying upon a particular source of future financing for its oil pollution cleanup and compensation fund.

However, states may continue to finance existing state funds whose purposes cover the types of damage which would be compensable under this Act, so long as that source of state financing is not a direct tax or fee which is paid into the state oil pollution fund. For example, a state fund, even if it addressed the same purposes as are covered under this Act, could be replenished by appropriations from the general state treasury, or could be financed through a bond issue, or other revenue sources.

States are not preempted from taxing or assessing a fee on any part of, or activity of, the oil industry, in order to finance state funds that pay for activities or damages which are not covered under this Act.

For example, if a state wished to impose a tax on the oil industry to finance a special State fund for compensating personal injuries resulting from oil pollution, this Act would not prohibit that tax. Similarly, nothing in this Act would prevent a state from imposing a tax or fee on the oil industry to finance a state fund which addressed non-oil pollution cleanup or damage compensation.

Furthermore, subsection (b) spells out one example of the kind of action which would not be preempted even if duplicative of the purposes and functions of this Act, that is, providing that nothing in this Act shall be interpreted in a way which would preclude states from requiring contributions from the oil industry or others for the purpose of financing the purchase and prepositioning of oil pollution cleanup and removal equipment, or to finance other preparations for responding to a discharge of oil which affects that state.

No state would be pre-empted, therefore, from assessing fees for the purpose of maintaining the type of oil pollution containment and cleanup response capability presently maintained, by way of illustration, by the state of Maryland.

The provisions in subsection (a) recognize exceptions provided in this Act. Therefore, subsection (a) should be read together with section 504(g) and subsections (b) and (c) of this section. Section 504(g) makes it clear that a responsible party who is subjected to liability under this Act retains his rights under any other law to pursue a cause of action against a third party, including a governmental entity, whose negligence caused or contributed to the incident. The same right is preserved to a guarantor who is subrogated to the rights of the responsible party.

Subsection (c) makes it clear that the Corporation may bring an original cause of action to recover compensation paid to a claimant, even though the recovery may be for damages that are specified in section 503(a). For example, the Corporation may recover compensation paid to claimants because of an incident caused by the negligence of some third party, including a governmental entity. The Corporation would have to pursue its remedy under a common law or statutory right, such as, for example, under the Federal Tort Claims Act or the Public Vessel Act.

Section 511

PENALTIES

Subsection (a) sets out certain civil penalty provisions for violations of section 505 of the Act. Any person who fails to comply with the requirements of section 505(a))(1) or section 505(b) or the regulations issued pursuant thereto, relating to the establishment and maintenance of evidence of financial responsibility, or who fails to comply with an appropriate order issued pursuant to the authority of section 505(a)(3), shall be subject to a civil penalty of not more than $10,000. The authority to assess and compromise the penalties involved is conferred upon the Secretary. Notice and opportunity for a hearing is required prior to the assessment of a penalty. The Attorney General may bring an action in the name of the Secretary to collect any penalty.

Section 512

APPROPRIATIONS

This section authorizes the appropriation of funds that may be required to carry out certain of the functions delegated to the Secretary by this legislation. It should be noted, however, that the primary burden of administering the provisions of this legislation will rest with the Corporation, and that all identifiable costs incurred by federal officials in the administration of this Act are to be reimbursed form the Fund in accordance with section 522(c).

Subtitle B—Marine Oil Pollution Insurance Corporation and Compensation Fund

Section 521

MARINE OIL POLLUTION INSURANCE CORPORATION

Subsection (a) establishes the Marine Oil Pollution Insurance Corporation as a wholly owned government corporation under the Department of Transportation. In the past, the Committee has selected either a trust fund in the Treasury or a private sector corporation to carry out the purposes of this legislation. The Committee this year selected the government corporation approach, patterened after the laws regarding corporations in Chapter 91 of title 31, United States Code, because this structure offers the benefits of both a purely public and purely private entity. The Committee was guided by the detailed discussion and principles contained in the "Report on Government Corporations—Volume I", published by the National Academy of Public Administration in August 1981, and the Congressional Research Service Report No. 83-236 GOV entitled "Administering Public Functions at the Margin of Government: the Case of Federal Corporations" (1983).

Subsection (b) provides that the Corporation is to be managed by an Administrator appointed by the President with the advice and consent of the Senate, but reporting directly to the Secretary of Transportation. Subsection (c) enumerates the general corporate powers to carry out the Corporation's functions under the Act. In addition to general authority to perform its business, specific powers are given to the Corporation to sue and be sued, carry out all fiscal functions, and hire all the personnel and consultants necessary to carry out its functions without regard to personnel limitations that may apply to other government activities. Subsection (d) requires an annual report by the Corporation on its programmatic activities and recommendations for legislative changes.

Section 522

MARINE OIL POLLUTION COMPENSATION FUND

Subsection (a) establishes the Marine Oil Pollution Compensation Fund as a public enterprise fund account in the Treasury of the United States to be administered by the Corporation. This is clearly distinguishable from a Trust Fund in the Treasury as the administrator should have full control of all the funds available to the Corporation as permitted by law. Subsection (b) provides that the Fund shall be made up of premiums per barrel of oil when assessed by the Corporation; amounts recovered, collected, or received under Title I through the claims settlement process; amounts transferred from the funds under the Deepwater Port Act of 1974 and Outer Continental Shelf Lands Act Amendments of 1978; income earned on investments; and amounts authorized to be borrowed.

Subsection (c) provides that the Fund shall be available immediately to pay for removal costs and assessment of natural resource damage, to pay damage claims not otherwise compensated, to carry out cleanup under Section 311 of the Federal Water Pollution Control Act, to carry out activities to prevent oil pollution under the Intervention on the High Seas Act, and to make contributions to the International Oil Pollution Compensation Fund, if required. Payment for costs of administration of the Act are also provided, including normal administrative costs of the Corporation; advertisement or notification of claims procedures; reimbursement of outside claims adjustors; services of the Coast Guard and other government agencies; pay, retirement, and travel expenses of personnel; the administration and payment of rebates; and the costs of both the General Accounting Office and private audits. Subsection (d) also provides for investments on behalf of the Fund in accordance with currently accepted procedures for government agencies.

Subsection (e) provides for a rebate of premiums paid into the Fund once the Fund has accumulated $300 million. No rebate would be made until the Fund accumulated $100 million over the $200 million level at which premiums are no longer collected. If the total amount in the Fund falls below $300 million, then no rebate could be paid until the total amount in the Fund exceeds $300 million again. Rebates will be made in chronological order of the payment of a premium into the Fund on a first-in-first-out basis. The Committee believes that, if the Fund is accumulating large amounts of funds due to the good spill record of the industry, the industry should benefit from that good record. If a rebate cannot be made for any reason, the Fund is authorized to retain those amounts.

Section 523

PREMIUMS

Subsection (a) sets the premium to be paid into the Fund when applicable at a maximum of 1.3 cents per barrel on oil brought into the United States, exported out of the United States, or refined in the United States, to be paid by the importer, exporter, or operator of the refinery respectively. The authority to set the amount at up to 1.3 cents per barrel was included to give the Corporation flexibility whenever premiums are required, depending on the needs of the Fund. Subsection (b) permits a credit for those who paid into the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund. These funds are being rolled over into the new Fund. The intent is to permit those who contributed to these specialized funds to receive some economic benefit from the contribution without a direct rebate. Further, if a credit were not given, those who paid into the prior funds would have to bear a disproportionate amount of the contribution to the newly created general Fund. Any person entitled to a credit may transfer that entitlement to another person. Subsection (c) ensures that no premium would be collected if the person who would be liable for the premium can establish that a premium had been imposed by this section previously with respect to that oil, thus avoiding double payment of a premium. Subsection (d) states that the premium will be collected only when the total amount in the Fund falls below $200 million. It is the Committee's hope that the Fund will become self-sustaining; however, authority must be provided for the Fund to be built up through premium collections to ensure that sufficient funds will be available in the event of a large spill. Subsections (e) and (f) provide for procedures for the collection of the premium.

Section 524

LIMITATION ON THE CORPORATION'S LIABILITY

Subsection (a) prescribes that claims may be paid only from the Marine Oil Pollution Compensation Fund and no other source. Subsection (b) prohibits payment from the Fund if it would reduce the account below $30 million, unless it is a claim for removal costs. This is to ensure that a minimum amount will be available to respond to emergency oil pollution removal cost requirements. Subsection (c) provides that, if a payment cannot be made because of the limitation in subsection (b), claims are to be paid in full in the order in which they were finally determined as the Fund is replenished or funds are borrowed. Subsection (d) provides for borrowing authority for the purpose of paying claims presented to the Fund. Finally subsection (e) limits the liability of the Corporation to $200 million per incident. If this limit is reached, all claims are to be reduced proportionately.

Section 525

SERVICES AND FACILITIES OF OTHER AGENCIES

Subsection (a) provides that the Corporation may use the personnel, services, or facilities of another agency subject to approval of the agency concerned and on a reimbursable basis. Further, subsection (b) provides for contributions to the Civil Service Retirement and Disability Fund for its officers and employees as required.

Section 526

OFFENSES AND PENALTIES

This section provides that any person failing to pay the premium required is liable for a civil penalty of not more than $100,000.

Section 527

GOVERNMENT CORPORATION LAWS

This section amends the government corporation laws in chapter 91 of title 31, United States Code, by adding the Marine Oil Pollution Insurance Corporation to the list of wholly owned government corporations. By this amendment, the Corporation is subject to the laws which apply to wholly owned government corporations including provisions on the corporation budget, audits, accounts, and obligations, unless otherwise provided in this Act. In general, it requires the wholly owned government corporation to have a business-type budget to be submitted to Congress by the President and an audit of financial transactions by the General Accounting Office (GAO).

Section 528

COORDINATION WITH OTHER PROVISIONS OF THIS ACT

Subsection (a) provides that claims that would have been payable out of any fund transferred to the Marine Oil Pollution Compensation Fund are to be paid out of the new fund. In addition, subsection (b) provides for the assessment of an additional premium on oil transported through the Trans-Alaska Pipeline to pay for any outstanding claims when the Trans-Alaska Pipeline Liability Fund is terminated.

Section 529

DEFINITIONS AND SPECIAL RULES

Subsection (a) generally provides that the terms defined in Subtitle A have the same meanings in this title and further defines the terms "barrel", "fund", and "United States" for the purposes of this title. The United States is to include the Outer Continental Shelf and any U.S. foreign trade zone. In addition, subsection (b)

establishes the special rule that natural gasoline produced at U.S. refinery from natural gas shall be treated as gasoline receive at the refinery at the time it is produced.

Subtitle C—Regulations, Effective Dates, and Savings Provisions

Section 541

EFFECTIVE DATES

This section sets out the effective dates for various provisions oi the Act. Generally, the fee collection, liability and compensation procedures set out in the act will go into effect 180 days following enactment. Subtitle D, which deals with the International conventions, will generally not become effective until those Conventions have been ratified and have entered into force in the United States. Other provisions will go into effect upon the date of enactment.

Upon enactment, therefore, authority will be conferred immediately upon the applicable federal officials to delegate necessary authority and to draft and issue regulations in order that these delegations and regulations may be in place by the time the substantive provisions of the Act go into effect, 180 days after enactment.

To provide assurance that there will be no time gaps in the requirements for financial responsibility, any regulations respecting financial responsibility issued under any other existing laws shall remain in effect until superseded by new regulations issued under this Act.

The effective dates regarding the Trans-Alaska Pipeline Liability Fund (TAPLF) allow the orderly phase-out of that fund. The TAPLF terminates 180 days after the effective date of the Act, except for the payment of claims and administrative costs of handling those claims occurring before termination and of winding up the TAPLF. Further, a period of 30 days after termination of the TAPLF is provided so that the Board of Trustees of the fund may certify any outstanding claims.

Section 542

CONFORMING AMENDMENTS

This section conforms the provisions of various other laws to the provisions of this Act.

Subsection (a) makes clarifying amendments to section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653). Paragraph (b) of that subsection is amended to clarify the liability of pipeline holders for oil pollution. Section 204(b) currently provides that permit holders who cause oil pollution "within or without the right-of-way or permit area" shall be liable for the total cost of removing the pollutants. A literal reading of that section could suggest that a permit holder might be held liable for the total cost of removal for a spill occurring anywhere in the world. That clearly was not the intention of this section. Rather, it was intended to cover oil pollution in the vicinity of the pipeline right-of-way or permit areas. The amendatory language in this Act will make it clear that the removal liability of the permit holder extends only to activities relating directly to the Trans-Alaska Pipeline. Additional language makes the Trans-Alaska Pipeline Authorization Act removal liability provisions inapplicable in those situations where this Act applies. In all other instances, those provisions in the Trans-Alaska Pipeline Authorization Act relating to removal costs and liability remain in effect.

This subsection also repeals that subsection of the Trans-Alaska Pipeline Authorization Act which established liability and a compensation fund for damages caused by oil spills from vessels transporting oil from the pipeline terminus to ports elsewhere in the United States. Further, it provides for a rebate of the TAPLF assets to the owners and operators who contributed to the fund and the payment of all costs and liabilities associated with that rebate. The TAPLF representative expressed a concern regarding the liability of officers and trustees of the TAPLF that may continue beyond the termination of the TAPLF. The Committee believes that the TAPLF should bear the cost of that liability rather than shifting it to the newly created fund as has been done in prior legislation. Thus, the TAPLF could take all steps necessary and proper to defray any of the lawful costs associated with officer and trustee liability under this subsection, including purchasing insurance and securing releases from satisfied claimants or contributors receiving rebates. Further, it provides for the assumption of liability under this Act for all TAPLF claims beginning on the effective date of the section. Finally, the Board of Trustees of the TAPLF must certify the amount of outstanding claims against the TAPLF. Accordingly, this subsection provides for the retention and disposition of monies in the TAPLF regarding claims prior to the effective date of this section.

Subsection (b) amends the Intervention on the High Seas Act, in order to make available to the Secretary, for intervention procedures authorized by that Act, the fund established by title II of this Act.

Subsection (c) amends section 311 of the Federal Water Pollution Control Act, as amended, in the following particulars:

(1) Subsection (a) of that section is amended by including a new definition of "person in charge". This makes clear the original intent of that Act that the person who is charged with the responsibility for reporting an oil pollution incident is the person who is in charge of the vessel or facility at the time of the incident. That requirement is not intended to apply to any superior of the person with the immediate responsibility.

(2) Paragraph (5) of subsection (b) of that section is amended to provide that the employer of the "person in charge" of a vessel or facility is also subject to imprisonment or a fine of up to $10,000 if the person in charge fails to immediately provide notification of a discharge. Besides making the employer subject to the penalties, this change insures that the employer of the person in charge is also entitled to the immunity provided in the last sentence of paragraph (5) of that section.

(3) Clause (A) of paragraph (6) of subsection (b) of that section is amended by adding the person in charge or his employer as parties against whom the civil penalty authorized in that paragraph may be assessed.

(4) Clause (B) of paragraph (6) of subsection (b) of that section is amended like clause (A).

(5) Subsection (c) of that section is amended by authorizing reimbursement to states from the Fund established by this Act, for reasonable costs in removing discharges of oil, pursuant to the National Contingency Plan published by the President for the purposes of such removal.

(6) Subsections (d) and (i) are amended to delete clauses made unnecessary by this Act.

(7) Subsection (k) is repealed, effective upon the repayment from the fund established by that subsection of all claims certified by the Secretary of Transportation to be outstanding against it on the date of enactment of this Act. The amount in the fund that exceeds the amount so certified shall be transferred to the general fund of the Treasury. Any amounts received by the United States with respect to claims brought under section 311 after the effective date of the repeal of subsection (k) shall also be deposited in the general fund of the Treasury.

(8) Subsection (1) is amended to eliminate a sentence made unnecessary by this Act.

(9) Subsection (p) is repealed because it sets out liability standards for vessels that are superseded by this Act.

(10) a new subsection (s) is added to provide that the Marine Oil Pollution Compensation fund established in Subtitle B shall be available to carry out the provisions of subsection (c), (d), (i), and (l) as those subsections relate to discharges of oil.

It is important to note that following enactment of this Act, liability and compensation for petroleum oil pollution damages caused by a discharge from a vessel or facility (as defined in this Act) will be determined in accordance with this Act. Liability and compensation procedures for spills of petroleum oil from other sources, such as onshore facilities, will continue to be determined in accordance with the Federal Water Pollution Control Act. The same will be true with respect to spills of non-petroleum oil. The Fund established by this Act, however, will be available to Coast Guard and other government agencies for immediate response to spills of all types of oil from all sources in the same manner as the fund established by section 311(k) is presently available to respond to such spills. This arrangement is provided for in Section 522(c).

Subsection (d) amends the Deepwater Port Act of 1974 by repealing various subsections pertaining to oil pollution liability and compensation which are superseded by this bill. This subsection also provides that amounts remaining in the Deepwater Port Liability Fund shall be deposited in the Fund established in Subtitle B. The Fund will assume all liabilities of the Deepwater Port Liability Fund.

Subsection (e) makes similar provisions for the assets and liabilities of the Offshore Oil Pollution Compensation Fund established under the Outer Continental Shelf Lands Act Amendments of 1978. Title II of that law (Public law 95-372), which established the Offshore Oil Pollution Compensation Fund, is repealed in its entirety.

Section 543

REGULATIONS AND DELEGATION OF AUTHORITY

This section authorizes the Secretary to prescribe regulations to carry out the functions of the Secretary under this Act. The Corporation is similarly authorized to prescribe regulations in accordance with its responsibilities under the Act. The Secretary is additionally authorized to delegate responsibilities to the Corporation.

Section 544

SEPARABILITY

The section provides for the separability of sections of this Act that may be held invalid.

Subtitle D—Implementation of Conventions

Section 561

RECOGNITION OF THE INTERNATIONAL FUND

This section recognizes the International Oil Pollution Compensation Fund established by the International Fund Convention as a legal person under the laws of the United States.

This section, like the remainder of the subtitle, will be effective only when both the 1984 Civil Liability Convention and the 1984 International Fund Convention are in force with respect to the United States.

Section 562

SERVICE OF PROCESS AND INTERVENTION

This section requires that the International Fund be served a copy of any complaint and any subsequent pleading filed in any action brought in the U.S. under the Civil Liability Convention. It also entitles the Fund to intervene as a party in any such actions.

Section 563

EXEMPTION FROM TAXATION

This section exempts the International fund and its assets from all direct taxation in the United States.

Section 564

PAYMENT OF CONTRIBUTIONS

This section provides that the United States shall be responsible for the amount of initial and annual contributions required by the International Fund Convention, and that this payment shall be made on behalf of the United States by the Fund established in Section 521.

Section 565

JURISDICTION OF DISTRICT COURTS

This section sets out the jurisdiction of United States district courts under the two International Conventions.

Section 566

RECOGNITION OF JUDGMENT

This section requires U.S. Courts to recognize decisions made under one of the International Conventions by a Court of any nation which is a party to that Convention.

Section 567

FINANCIAL RESPONSIBILITY.

This section sets out the financial responsibility requirements needed to implement the Civil Liability Convention and provides sanctions for failure to observe those requirements.

Section 568

CIVIL PEALTY

This section establishes a civil penalty of up to $10,000 for violations of the requirements of this subtitle.

Section 569

WAIVER OF SOVERIGN IMMUNITY

This section provides for the waiver of U.S. rights to sovereign immunity with respect to any controversy arising under the Civil Liability Convention and relating to a ship owned by the United States and used for commercial purposes.

Section 570.

RULES AND REGULATIONS

This section provides the Secretary with authority to issue rules and regulations necessary to implement the two international Conventions.

Section 571

DEFINITIONS,

This section provides that the terms defined in subtitle A have the same meaning in this subtitle and further defines the terms "Civil Liability Convention", "International Fund", and "International Fund Convention".

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 2817 have been made by the Committee during the 99th Congress.

2. With respect to the requirements of clause (2)(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, an explanation of the budgetary effects of title V of H.R. 2817, as reported by the Committee on Merchant Marine and Fisheries, is contained in the report to the Committee from the Congressional Budget Office, below. The overall effect of the budget authority of title V is negligible, and is consistent with the most recent concurrent budget resolution, S. Con. Res. 32. H.R. 2817, as reported by the Committee, has no effect on tax expenditures.

3. With respect to the requirements of clause (2)(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of H.R. 2817.

4. With respect to the requirements of clause (2)(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received the following estimate of the cost of H.R. 2817 from the Director of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 10, 1985.

Hon. Walter B. Jones,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2817, the Superfund Amendments of 1985, as amended.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 2817.
2. Bill title: Superfund Amendments of 1985, as amended.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, October 1, 1985.
4. Bill purpose: As amended, H.R. 2817 would combine the reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with H.R. 1232, the Comprehensive Oil Pollution Liability and Compensation Act.

H.R. 2817 would authorize appropriations from the Superfund of up to $1.75 billion a year through 1990, to be financed through a combination of general fund appropriations (up to $250 million a year) and tax revenues. As amended, the bill would require that sums recovered by the federal government in natural resource damage suits be available to ameliorate such damage without further appropriations action.

The amended H.R. 2817 would also consolidate federal oil pollution response activities into one entity: a Marine Oil Pollution Insurance Corporation. The wholly owned government corporation would administer the newly created Marine Oil Pollution Compensation Fund. The fund would be credited with the unobligated balances of the Deepwater Port Liability and Offshore Oil Compensation funds. It would be financed by a premium of 1.3 cents per barrel on crude oil received at U.S. refineries and exported, as well as on imports of crude oil and petroleum products.

5. Estimated cost to the Federal Government: Tables 1 and 2 below show the budgetary effects of the Superfund Amendments of 1985 and the Comprehensive Oil Pollution Liability and Compensation Act, respectively. The combined effect on the federal budget is shown in Table 3.

TABLE 1: BUDGET IMPACT OF THE SUPERFUND AMENDMENTS OF 1985

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Spending effects:					
Estimated authorization level	2,000	2,000	2,000	2,000	2,000
Estimated outlays	900	1,600	1,900	2,000	2,000
Revenue effects:					
Estimated revenues from excise taxes	1,713	1,740	1,740	1,759	1,768
Less: Income tax offset	428	435	438	440	442
Estimated net revenues	1,285	1,305	1,313	1,319	1,326
Total budget impact:					
Estimated revenues	1,285	1,305	1,313	1,319	1,326
Estimated outlays	900	1,600	1,900	2,000	2,000
Estimated (−) in Deficit	−385	295	587	681	674

TABLE 2: BUDGET IMPACT OF THE COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated outlay decrease: From new premium	−3	−41	−41		
Estimated Revenue Effects:					
From repeal of existing tax (gross)	−12	−12	−12	−12	−12
From offsetting income tax changes	2	−7	−7	3	3
Net revenue effect	−10	−19	−19	−9	−9
Net increase or decrease (−) to deficit	7	−22	−22	9	9

TABLE 3: COMBINED BUDGET EFFECT

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated revenues	1,275	1,286	1,294	1,310	1,317
Estimated outlays	897	1,559	1,859	2,000	2,000
Estimated increase or decrease (−) in deficit	−378	273	565	690	683

The costs of this bill fall within budget function 300.

Basis of Estimate: Tables 1 and 2 are identical to the CBO cost estimates submitted for H.R. 2817, as ordered reported by the House Committee on Energy and Commerce, and H.R. 1232, as ordered reported by the House Committee on Merchant Marine and Fisheries, respectively.

As amended, H.R. 2817 would require that sums recovered in natural resource damage suits be available to the EPA without further appropriations action. While this provision would have no net effect on budget outlays, it would create new direct spending authority for the agency. Based on information obtained from the EPA, we do not expect such recoveries to be significant within the next five years; therefore, no new budget authority has been included in the above tables.

6. Estimated cost to State and local governments: A number of provisions of H.R. 2817 would affect the budgets of state governments. The Superfund Amendmens Act would amend Section 104 of CERCLA to grant credits to states for expenses incurred between January 1, 1978 and enactment of the 1980 Act. Credit would also be granted for state cleanup expenses at sites owned but not operated by the state. No estimate of the amount of these credits is currently available.

In addition, the bill would require states to coordinate data collection and emergency response planning activities within the state. The costs of these activities are not expected to be significant.

Finally, amendments to CERCLA would effectively repeal the provisions which prohibit states from taxing to fund their own hazardous waste response programs. This would enable states to impose any type of taxes necessary for purposes of recouping state cleanup costs and related expenses.

Conversely, the Comprehensive Oil Pollution Liability and Compensation Act would prohibit states from imposing their own taxes to finance any fund similar to the Marine Oil Pollution Compensation Fund (MOPCF). States now having such funds would be permitted to continue collections for three and one-half years after the bill is enacted. There would be no prohibition against taxes used to finance other expenses, such as the purchase of oil pollution removal equipment. Because states would be permitted to make claims against the MOPCF for their cleanup costs and for economic and natural resource damages, the prohibition against state funds is not expected to have any adverse impact on state budgets.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 22, 1985, CBO prepared a cost estimate for H.R. 1232, the Comprehensive Oil Pollution Liability and Compensation Act, as ordered reported by the House Committee on Merchant Marine and Fisheries, June 26, 1985. On August 1, 1985, CBO transmitted a cost estimate for H.R. 2817, the Superfund Amendments of 1985, as ordered reported by the House Committee on Energy and Commerce, July 24, 1985. The above estimate is identical to the sum of the earlier estimates.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

With respect to the requirements of clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of the amendments to H.R. 2817 recommended by the Committee, would have no significant inflationary effect upon prices and costs in the operation of the national economy.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 2817, as amended, as reported, in fiscal year 1984, and each of the following four years. However, under paragraph (d) of clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

DEPARTMENTAL REPORTS

As of the filing date of this report, no departmental reports had been received.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

AN ACT To provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. *(a)* IN GENERAL.—For purpose of this title, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency *except as provided in subsection (b);*

(3) "barrel" means forty-two United States gallons at sixty degrees Fahrenheit;

(4) "claim" means a demand in writing for a sum certain;

(5) "claimant" means any person who presents a claim for compensation under this Act;

(6) "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act;

(7) "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals;

(8) "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

(9) "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

(10) "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases (F) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, (G) any injection of fluids authorized under

Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act, (H) any emission into the air subject to a permit or control regulation under section 111, section 112, title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency) including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issue pursuant to the Atomic Energy Act of 1954;

(11) "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act [or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act];

(12) "ground water" means water in a saturated zone or stratum beneath the surface of land or water;

(13) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil

or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, **[**or**]** any foreign government, *any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe;*

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, and person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

(B) in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a) (3) or (4) of this Act, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control;

(C) in the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a) (3) or (4) (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State or any interstate body;

(22) "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment *(including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutants or contaminants),* but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (D) the normal application of fertilizer;

(23) "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1974;

(24) "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare of the environment. The term in-

cludes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances [or] *and associated* contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilites where the [President] *Administrator* determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or [welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials]; *welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials;*

(25) "respond" or "response" means remove, removal, remedy, [and] remedial action, *and enforcement activities related thereto;*

(26) "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance;

(27) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States, Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction:

(28) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(29) "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act;

(30) "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(31) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act; and

(32) "liable" and "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(33) "Incineration vessel" means any vessel which carries hazardous substances for the purpose of incineration of such substances, during any period when such substances or residues of such substances are on board the vessel.

(b) USE OF TERM "ADMINISTRATOR".—

(1) DELEGATIONS RETAINED.—Where, before the date of the enactment of the Superfund Amendments of 1985, any authority under this Act was delegated to the head of any other department, agency, or instrumentality of the United States (or where any such authority had been retained by the President), the term "Administrator" refers to the head of such department, agency, or instrumentality (or to the President in the case of an authority retained by the President).

(2) EXCEPTION FOR FEDERAL FACILITIES.—Paragraph (1) shall not apply to any authority delegated to a department agency or instrumentality with respect to any facility owned or operated by that department, agency, or instrumentality. With respect to such facilities, the term "Administrator" when used in this Act refers to the Administrator of the Environmental Protection Agency.

(3) ATSDR.—When used in section 116 of this Act, the term "Administrator" means the Administrator of the Agency for Toxic Substances and Disease Registry or the Administrator of the Environmental Protection Agency as specified in section 116.

REPORTABLE QUANTITIES AND ADDITIONAL DESIGNATIONS

SEC. 102. (a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare of the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. *The Administrator shall promul-*

gate regulations establishing such reportable quantities for all hazardous substances by December 31, 1986.

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103 (a) or (b) of this title.

NOTICES, PENALTIES

SEC. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected States.

(b) Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release shall, upon conviction, be fined not more than **[**$10,000 or imprisoned for not more than one year, or both**]** *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both. Any such person shall also be subject to a civil penalty of not more than $25,000 for each day during which such failure continues.* Notification received pursuant to this **[**paragraph**]** *subsection* or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: *Provided, However,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d)(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined [not more than $20,000, or imprisoned for not more than one year, or both.] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than three years, or both. Any such person shall*

also be subject to a civil penalty of not more than $25,000 for each day during which such violation continues.

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center, or

(2) which is continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

RESPONSE AUTHORITIES

SEC. 104. (a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the [President] *Administrator* is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the [President] *Administrator* deems necessary to protect the public health or welfare or the environment [, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible part]. *The Administrator shall give primary attention to those releases which he deems may present a public health threat.*

(2) For the purpose of this section, "pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 101(14) (A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(3) REMOVAL ACTION.—Any removal action undertaken by the Administrator under this subsection (or by any other person referred to in section 122) shall contribute to the efficient performance of any long term remedial action to the maximum extent practicable with respect to the release or threatened release concerned.

(4) RESPONSE BY POTENTIALLY RESPONSIBLE PERSONS.—The Administrator is authorized to provide for response action by potentially responsible persons in accordance with section 122.

(b)*(1)* Whenever the [President] *Administrator* is authorized to act pursuant to subsection (a) of this section, or whenever the [President] *Administrator* has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the [President] *Administrator* may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

(2) The Administrator shall prompty notify the appropriate Federal and State natural resource trustees of potential damages to natu-

ral resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c)(1) Unless (A) the [President] *Administrator* finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the [President] *Administrator* has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, *or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken* obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after [$1,000,000] *$2,000,000* has been obligated for response actions or [six months] *12 months* has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) the [President] *Administrator* shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The [President] *Administrator* shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the [President] *Administrator* providing assurances deemed adequate by the [President] *Administrator* that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the [President] *Administrator*; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the [President] *Administrator* and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the [President] *Administrator* may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned *and operated* at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. [The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release.] *The Administrator shall grant the State a*

credit against the share of the costs for which it is responsible under this paragraph in accordance with subsection (j).

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under title II of this Act to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(4) STATE CREDITS.

(A) CERTAIN OUT-OF-POCKET EXPENSES.—The Administrator shall treat the expenses described in this subsection as a credit against the share of the costs for which a State is responsible under paragraph (3). The credit under this paragraph shall be limited to those State expenses which the Administrator determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds.

(B) BASIC CREDIT.—In the case of any facility listed on the National Priorities List under the National Contingency Plan, the credit shall include amounts expended by a State for remedial action at the facility if such amounts are expended pursuant to a contract or cooperative agreement with the Administrator.

(C) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit shall include expense for remedial action at a facility before the listing of the facility on the National Priorities List (NPL) or before a contract or cooperative agreement is entered into under subsection (d) for the facility. No such credit shall be allowed unless the Administrator determines that such expenses would have been credited to the State under subparagraph (b) had the expenditures been made after listing of the facility on the NPL after the date on which such contract or cooperative agreement was entered into.

(D) ADMINISTRATIVE EXPENSES.—The credit shall include funds expended or obligated by the State or political subdivision for administration of provisions under this Act. The Administrator shall promulgate such rules as may be necessary to implement this subparagraph.

(E) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

(F) STATE EXPENSES AFTER DEC. 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this subsection.

(G) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the enactment of this paragraph, the Administrator may require prior approval of each item of expenditure as a condition of granting a credit under this subsection.

(H) USE OF CREDITS.—Credits granted under this subsection may only be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions (and future maintenance thereof) at facilities in that State. A credit shall not entitle the State to any direct payment.

(5) SECTION OF REMEDIAL ACTION.—The Administrator shall select the remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. Activities required to maintain the effectiveness of such measures following the completion of remedial action shall be considered maintenance.

[(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(d) COOPERATIVE AGREEMENTS WITH STATES.—

(1) IN GENERAL.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof may apply to the Administrator to carry out actions authorized in this section. If the Administrator determines that the State or political subdivision has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(8) and to carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The Administrator shall make a determination regarding such an application within 90 days after the Administrator receives the application.

(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the Administrator may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(2) If the [President] *Administrator* enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the [President] *Ad-*

ministrator may, after provising sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the [President] *Administrator,* the [President] *Administrator* is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the [President] *Administrator,* may, in his discretion, treat these related facilities as one for purposes of this section.

[(e)(1) For purposes of assisting in determining the need for response to a release under this title or enforcing the provisions of this title, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

[(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

[(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e) INFORMATION GATHERING AND ACCESS.—

(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the Administrator, duly designated by the Administrator, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, or property, or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the establishment, place, property, or location referred to in those paragraphs. Any duly designated officer, em-

ployee, or representative of a State under a contract or cooperative agreement is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at such vessel, facility, establishment, place, property, or location. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

(2) ACCESS TO INFORMATION.—Any officer, employee, or representative referred to in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter—

(A) The identification or nature of materials generated, treated, stored, transported to, or disposed of at a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either shall (i) grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, or property to inspect or copy all documents or records relating to such matters, or (ii) copy and furnish to the officer, employee, or representative all such documents or records, at the option of such person.

(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following—

(A) Any establishment or other place or property where any hazardous substance or pollutant or contaminant, may be, or has been generated, stored, treated, disposed of, or transported from.

(B) Any establishment or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any establishment or other place or property where such release is or may be threatened.

(D) Any establishment or other place or property where entry is needed to determine the need for response of the appropriate response or to effectuate a response action under this title.

(4) INSPECTION AND SAMPLES.—

(A) AUTHORITY.—Any officer, employee, or representative described in paragraph (1) is authorized to inspect and obtain samples from any establishment or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or

labeling for suspected hazardous substances or pollutant or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders.—

(A) Issuance.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the Administrator may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance.—The Administrator may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions—

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority.—Nothing in this subsection shall preclude the Administrator from securing access or obtaining information in any other lawful manner.

(7) Clearance.—Notwithstanding this subsection entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the Administrator who is properly cleared.

[(2)] *(8) Confidentiality of information.*—(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the [President] *Administrator*) shall be available to the public, except that upon a showing satisfactory to the [President] *Administrator* (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the [President] *Administrator* (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this Act, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the [President] *Administrator* may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the [President] *Administrator* (or any representative of the [President] *Administrator*) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) Any person who fails or refuses to comply with a request or order under this subsection shall be subject to a civil penalty of not more than $25,000 for each day during which such failure or refusal continues.

(f) In awarding contracts to any person engaged in response actions, the [President] *Administrator* or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

(g)(1) All labors and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The [President] *Administrator* shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40 of the United States Code.

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the [President] *Administrator* may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the [President] *Administrator* shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

[(i) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control, the Administrator of the Occupational Safety and Health Administration, and the Administrator of the Social Security Administration, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(1) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

[(2) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

[(3) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

[(4) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances; and

[(5) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.]

(i) CLEANUP SCHEDULES.—

(1) EVALUATION.—Within 3 years after the enactment of this subsection, or the date of placement on the Emergency Response and Remedial Investigation System (ERRIS) list, whichever is later, all facilities listed on ERRIS shall be evaluated, in accordance with the criteria established in section 105 under the

National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(2) COMMENCEMENT OF RIFS.—The Administrator shall insure commencement of remedial investigations and feasibility studies for all facilities listed on the National Priorities List in accordance with the following schedule—

(A) 150 of such facilities within 12 months after the date of enactment of this subsection.

(B) 325 of such facilities within 24 months after such date of enactment.

(C) An additional 200 facilities within each year thereafter.

(3) COMPLETION OF RIFS.—The Administrator shall ensure completion of remedial investigations and feasibility studies (RIFS) for no fewer than 600 facilities on the National Priorities List within the 5-year period which commences September 1, 1985. The Administrator shall submit an annual report to the Congress at the end of each year during such 5-year period specifying the RIFS which have been completed during that year.

(4) COMMENCEMENT OF REMEDIAL ACTION.—Within 12 months after completion of Remedial Investigations and Feasibility Studies (RIFS), the administrator shall ensure commencement of remedial action at no fewer than 90 percent of the facilities for which completed RIFS have determined that such remedial action is necessary.

NATIONAL CONTINGENCY PLAN

SEC. 105. *(a) REVISION AND REPUBLICATION.*—Within one hundred and eighty days after the enactment of this Act, the [President] *Administrator* shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the [President] *Administrator* taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, *the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release.* State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the [President] *Administrator* shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the [President] *Administrator* priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the [President] *Administrator* shall consider any priorities established by the States. To the extent practicable, [at least four hundred of] the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets" and, to the extent practicable, shall include among the one hundred highest priority facilities [at least] one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. *A State shall be allowed to designate its highest priority facility only once.* Other priority facilities or incidents may be listed singly or grouped for response priority purposes; and

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2) (F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The **[**President**]** *Administrator* may, from time to time, revise and republish the national contingency plan.

(b) Petition for Assessment of Release.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the Administrator has not previously conducted a preliminary assessment of such release, the Administrator shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the Administrator shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

ABATEMENT ACTION

Sec. 106. (a) In addition to any other action taken by a State or local government, when the **[**President**]** *Administrator* determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The **[**President**]** *Administrator* may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b)*(1)* Any person **[**who willfully**]** *who, without sufficient cause, willfully* violates, or fails or refuses to comply with, any order of the **[**President**]** *Administrator* under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than **[**$5,000**]** *$25,000* for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days of completion of the required action, petition the Administrator for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the Administrator refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the Administrator in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the Administrator's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with section 2412 (a) and (d) of title 28 of the United States Code. A petitioner who has established pursuant to subparagraph (C) that it is not liable for any response costs may also receive compensatory damages.

(F) Any reimbursement awarded under this paragraph shall not be paid from the Hazardous Substances Superfund.

(c) Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, another imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309, and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113, 114, and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

(d) PESTICIDES. The Administrator shall not take action under this section with respect to any release or threatened release resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this subsection shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action for such hazardous substance.

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defense set forth in subsection (b) of this section—

(1) the owner and operator of a vessel **[**(otherwise subject to the jurisdiction of the United States)**]** or a facility,

(2) any person who at the time of disposal of any hazardous substance owner or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for dispoasl or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility *or incineration vessel* owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities *incineration vessels* or sites selected by such person,

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State *or an Indian tribe* not inconsistent with the national contingency plan *and all costs incurred by the United States Government or a State under section 104(b)*;

(B) any other necessary costs of response incurred by any other persons consistent with the national contingency plan; **[**and**]**

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release**[**.**]** *; and*

(D) the costs of any health effects assessment or study carried out under such section 116; and

(E) all other costs incurred by the United States Government before the enactment of the Comprehensive Environmental Compensation and Liability Act of 1980 and subsequent to the enactment of the Resource Conservation and Recovery Act of 1976, in response to a release or threatened release of a hazardous substance from a facility used for the storage, treatment, or disposal of hazardous substances, where such person knew or

should have known of the response action and the costs are not inconsistent with the response actions provided for in subsections 101(23) and (24) of this Act.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (E). Such interest shall accrue from 90 days after the date on which the United States files an action for recovery of such amounts. The rate of interest on the outstanding unpaid balance of the amounts recoverable under paragraph (2) shall be the same rate as is applicalbe under paragraph (2) shall be the same rate as is applicable to investments of the Fund under section 223(b) of this Act. For purposes of applying section 223(b) in the case of interest on amounts recoverable under paragraph (2), the term "comparable maturity" shall be determined with reference to the date 90 days after the date of filing of the action for recovery under this section.

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous subtance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c)(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, *other than an incineration vessel,* which carries any hazardous substance as cargo or residue, $300 per gross ton, or $5,000,000, which ever is greater;

(B) for any other vessel, *other than an incineration vessel,* $300 per gross ton, or $500,000, whichever is greater;

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979), or rolling stock, $50,000,000 or such lesser amount as the [President] *Administrator* shall establish by regulation, but in no event less than $5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, $8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for *any incineration vessel or for* any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus $50,000,000 for any damages under this title.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the [President] *Administrator* pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The [President] *Administrator* is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection be deposited in the Fund.

(d)*(1) RENDERING CARE OR ADVICE.*— No person shall be liable under this title for *costs and* damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. *This subsection shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently unertakes a response action.* This subsection shall not preclude liability for *costs and* damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(2) GOVERNMENTAL RESPONSE TO EMERGENCY.—No Federal, State, or local government agency shall be liable under this title for costs or damages resulting from actions taken by the agency in response to an emergency created by the release or threatened release of a hazardous substance, pollutant, or contaminant from a vessel, facil-

ity, or site owned by another person. This paragraph shall not affect the liability of any Federal, State or local government agency for negligence.

(e)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f)*(1)* *NATURAL RESOURCES LIABILITY.*—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State: *Provided, however,* That no liability to the United States or State shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically indemnified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. The [President,] *Administrator,* or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. [Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.] *Sums recovered by the United States Government as trustee under this subsection shall be retained by the Administrator, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources.* There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

(A) FEDERAL.—Each Federal agency designated as a natural resource trustee under the National Contingency Plan published under section 105 of this Act shall assess damages for injury to,

destruction of, loss of natural resources under its trusteeship resulting from a release of hazardous substances for the purposes of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act, and may, upon request of and reimbursement from a State, assess damages for those natural resources under the State's trusteeship.

(B) State.—The Governor of each State shall designate the State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act and shall notify the Administrator of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship.

(C) Rebuttable presumption.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding under this Act or section 311 of the Clean Water Act.

[(g) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity, including liability under this section.]

(g) Federal Agencies.—For provisions relating to Federal agencies see, section 119 of this Act.

(h) The owner or operator of a vessel shall be liable in accordance with this section and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

(i) No person (including the United States or any State *or Indian tribe*) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provisions of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Recovery by any person (including the United States or any State *or Indian tribe*) for response costs or damges resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10) (B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

[(k)(1) The liability established by this section or any other law for the owner or opeator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

[(A) such facility and the owner and operator thereof has complied with the requirements of substitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

[(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

[(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notified the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

[(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

[(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

[(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibilty for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

[(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

[(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.]

(k) Federal Lien.—

(1) In general.—All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration.—The lien imposed by this subsection shall rise at the time costs are first incurred by the United States with respect to a response action under this Act. Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

(3) Notice and validity.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the approprite office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is physically located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954. This paragraph shall not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

(4) Action in rem.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or had occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any persons to recover all costs and damages for which such person is liable under subsection (a) of this section.

(l) Maritime Lien.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release of threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to received such costs.

FINANCIAL RESPONSIBILITY

Sec. 108. (a)(1) The owner or operator of each vessel (except a non-self propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the **[**President,**]** *Administrator,* evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater) ***to cover the liability prescribed under paragraph (1) of section 107(a) of this Act.*** Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) In addition to the financial responsibility required by paragraph (1) of this subsection, the Administrator may require additional evidence of financial responsibility for incineration vessels in such amounts as the Administrator deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and by any other factors deemed relevant.

[(2)] *(3)* The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the [President] *Administrator* that the financial responsibility provisions of [paragraph (1) of] this subsection have been complied with.

[(3)] *(4)* The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the [President] *Administrator* that the financial responsibility provisions of [paragraph (1) of] this subsection have been complied with.

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the [President] *Administrator* shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the [President] *Administrator* shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the [President] *Administrator* determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the [President] *Administrator* in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgements, and voluntary claims satisfaction. To the maximum extent practicable, the [President] *Administrator* shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. *Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contrac-*

tual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the [President] *Administrator* believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

[(c) Any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

[(d) Any guarantor acting in good faith against which claims under this Act are asserted as a guarantor shall be liable under section 107 or section 112(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under section 108 of this Act, and only to the extent that liability is not excluded by restrictive endorsement: *Provided,* That this subsection shall not alter the liability of any person under section 107 of this Act.]

(c) Direct Action.—

(1) Releases from vessels.—In the case of a release or threatened releases from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was cause by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been

entitled to invoke in a proceeding brought by the owner or operator against him.

(2) Releases from facilities.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of Guarantor Liability.—

(1) Total liability.—The total liability under this Act of any guarantor for a facility or vessel shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the person liable under section 107.

(2) Other liability.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.

[*PENALTY*] PENALTIES

Sec. 109. *(a) Failure To Comply With Section 108.*—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 108, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed [$10,000] *$25,000* for each day of violation.

(b) False or Misleading Information.—

(1) Criminal penalty.—Any person who submits in any notice required under section 103 any information which he knows to be false or misleading shall be imprisoned for not more three years or fined in accordance with section 3571 of title 18 of the United States Code (or section 3623 of title 18 if applicable), or both.

(2) Civil penalty.—Any person who submits in any notice required under section 103 any false or misleading information shall be subject to a civil penalty of not more than $25,000 for each during which such violation continues unless such information is corrected within 30 days after the date of such submission.

(c) ASSESSMENT AND COLLECTION OF CIVIL PENALTIES.—Any civil penalty under this Act shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of such a penalty the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

EMPLOYEE PROTECTION

SEC. 110. (a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) This section shall have no application to any employee who acting without discretion from his employer (or this agent) deliberately violates any requirement of this Act.

(e) The [President] *Administrator* shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such employee, may request the [President] *Administrator* to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the [President] *Administrator* shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendation as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the [President] *Administrator* or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

USES OF FUND

SEC. 111. (a) *IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under section 221 not more than $1,750,000,000 for each of the 5 fiscal years commencing with October 1, 1985 (plus for each such fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved.)* The [President] *Administrator* shall use the money in the Fund for following purposes:

(1) payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act;

(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such cost must be approved under said plan and certified by the responsible Federal official;

(3) payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title; [and]

(4) payment of costs specified under subsection (c) of this section; *and*

(5) the cost of grants under section 117(e) (relating to grants to citizens for technical assistance).

The [President] *Administrator* shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

(b) Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title [for injury to, or destruction or loss of, natural resources, including cost for damage assessment:] *for the cost of damage assessments relating to injury to, destruction or loss of, natural resources: Provided, however,* That any claim may be asserted only by the President, as trustee, [for] *relating to* natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State [for] *relating to* natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State.

(c) Uses of the Fund under subsection (a) of this section include—

(1) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance;

[(2) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance;]

(3) subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances;

(4) the costs of [epidemiologic studies] *epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles,* development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan; [and]

(6) subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessment hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees**[.]**; and

(7) cost incurred by the administrator in evaluating facilities pursuant to petitions under section 105(b);

(8) the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements, where the responsible party or parties have been determined, but where inadequate oversight assistance has been provided by that responsible party or parties; and

(9) the costs of carrying out the research and training program under section 116(s), to the extent that such costs do not exceed the following amounts—

(A) For the fiscal year 1986, $3,000,000.
(B) For the fiscal year 1987, $10,000,000.
(C) For the fiscal year 1988, $25,000,000.
(D) For the fiscal year 1989, $35,000,000.
(E) For the fiscal year 1990, $40,000,000.

As used in paragraph (4), the term "health assessment" shall have the meaning provided by section 116(f)(7).

[(d)(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

[(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or less resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.**]**

(e)(1) Claims against or presented to the Fund *pursuant to subsection 111(a)(2)* shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the **[**President**]** *Administrator* shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only *(A)* for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section *and (B) for the repayment of advances made under sec-*

tion 223(c), other than advances subject to the limitation of section 223(c)(2)(C).

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) The [President] *Administrator* is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The [President] *Administrator* is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

(g) The [President] *Administrator* shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the [President] *Administrator* shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

[(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and sections 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and sections 301(f)(5) of the Federal Water Pollution Control Act.

[(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and sections 301(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of a claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

[(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.]

[(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

[(k) The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.]

(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall undertake the following—

(1) AUDIT.—The conduct of an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a random sample of agreements with States carrying out response actions under this subtitle and an examination of remedial investigations and feasibility studies prepared for remedial actions.

(2) STATUS REPORT.—The preparation of a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year. The status report shall include a comparison to remedial and enforcement actions undertaken in prior fiscal years.

(3) ESTIMATE.—The preparation of an estimate of the amount of resources, including the number of work years or personnel, which would be necessary for the department, agency, or instrumentality to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

The Inspector General shall submit to the Congress an annual report regarding the audit and status report required under this *subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.*

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance ws released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for the United States claimants.

(m) GENERAL REVENUE SHARE OF SUPERFUND.—

(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

(A) For fiscal year 1986, $250,000,000.
(B) For fiscal year 1987, $250,000,000.
(C) For fiscal year 1988, $250,000,000.
(D) For fiscal year 1989, $250,000,000.
(E) For fiscal year 1990, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 221(b)(1)(B) for the prior fiscal year.

(n) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—For fiscal year 1986 and each fiscal year thereafter, not less than $30,000,000 shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 116. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Trust Fund.

(o) TAX ON IMPORTED SUBSTANCES.—(1) The amount authorized to be appropriated for any fiscal year under subsection (m) for deposit

into the Hazardous Substances Superfund shall be reduced by the revenues estimated to be received during such year from a tax described in paragraph (2).

(2) A tax is described in this paragraph only if—

(A) the tax is designed to generate revenues of $140,000,000 for each of the 5 fiscal years after fiscal year 1985.

(B) the tax is imposed on the sale by the importer of any substanced which is directly or substantially manufactured or produced from materials or feedstocks consisting of 1 or more taxable chemicals (as defined in section 4662(a) of the Internal Revenue Code of 1954), and

(C) the amount of the tax is the amount of the tax which would have been imposed by section 4661 of such Code on the taxable chemicals (as so defined) used as raw materials or feedstocks in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such substance.

If the importer does not furnish sufficient information to determine under subparagraph (C) the amount of tax imposed on any substance, the tax is described in this paragraph only if the amount of the tax imposed on such substance is 10 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

(3) Such a tax should take effect on January 1, 1986.

CLAIMS PROCEDURE

SEC. 112. (a) All claims which may be asserted against the Fund pursuant to section 111 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisifed within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person to present the claim to the Fund for payment.

(b)(1) The [President] *Administrator* shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined [up to $5,000 or imprisoned for not more than one year, or both.] *in accordance with section 3623 (or 3571 if applicable) of title 18 of the United States Code or imprisoned for not more than 3 years, or both.*

(2)(A) Upon receipt of any claim, the [President] *Administrator* shall as soon as practicable inform any known affected parties of the claim and shall attempt to promote and arrange a settlement between the claimant and any person who may be liable. If the claimant and alleged liable party or parties can agree upon a settlement, it shall be final and building upon the parties thereto, who will be deemed to have waived all recourse against the Fund.

(B) Where a liable party is unknown or cannot be determined, the claimant and the [President] *Administrator* shall attempt to arrange settlement of any claim against the Fund. The [President] *Administrator* is authorized to award and make payment of such a settlement, subject to such proof and procedures as he may promulgate by regulation.

(C) Except as provided in subparagraph (D) of this paragraph, the [President] *Administrator* shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in implementing this subsection and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), upon a showing by the [President] *Administrator* that advertising is not reasonably practicable. When the services of a State agency are used hereunder, no payment may be made on a claim asserted on behalf of that State or any of its agencies or subdivisions unless the payment has been approved by the [President.] *Administrator.*

(D) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the [President] *Administrator* may use Federal personnel to implement this subsection.

(3) If no settlement is reached within forty-five days of filing of a claim through negotiation pursuant to this section, the [President] *Administrator* may, if he is satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim. If the claimant is dissatisfied with the award, he may appeal it in the manner provided for in subparagrap (G) of paragraph (4) of this subsection. If the [President] *Administrator* declines to make an award, he shall submit the claim for decision to a member of the Board of Arbitrators established pursuant to paragraph (4).

(4)(A) Within ninety days of the enactment of this Act, the [President] *Administrator* shall establish a Board of Arbitrators to implement this subsection. The Board shall consist of as many members as the [President] *Administrator* may determine will be necessary to implement this subsection expeditiously, and he may increase or decrease the size of the Board at any time in his discretion in order to enable it to respond to the demands of such implementation. Each member of the Board shall be selected through utilization of the procedures of the American Arbitration Association: *Provided, however,* That no regular employee of the [President] *Administrator* or any of the Federal departments, administrations, or agencies to whom he delegated responsibilities under this Act shall act as a member of the Board.

(B) Hearings conducted hereunder shall be public and shall be held in such place as may be agreed upon by the parties thereto, or, in the absence of such agreement, in such place as the [President] *Administrator* determines, in his discretion, will be most convenient for the parties thereto.

(C) Hearings before a member of the Board shall be informal, and the rules of evidence prevailing in proceedings need not be required. Each member of the Board shall have the power to administer oaths and to subpena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented to him for decision. Testimony may be taken by interrogatory or deposition. Each person appearing before a member of the Board shall have the right to counsel. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the [President] *Administrator.* If a person fails or refuses to obey a subpena, the [President] *Administrator* may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(D) In any proceeding before a member of the Board, the claimant shall bear the burden of proving his claim. Should a member of the Board determine that further investigations, monitoring, surveys, testing, or other information gathering would be useful and necessary in deciding the claim, he may request the [President] *Administrator* in writing to undertake such activities pursuant to section 104(b) of this title. The [President] *Administrator* shall dispose of such a request in his sole discretion, taking into account various competing demands and the availability of the technical and financial capacity to conduct such studies, monitoring, and investigations. Should the [President] *Administrator* decide to undertake the requested actions, all time requirements for the processing and deciding of claims hereunder shall be suspended until the [President] *Administrator* reports the results thereof to the member of the Board.

(E) All costs and expenses approved by the [President] *Administrator* attributable to the employment of any member of the Board shall be payable from the Fund, including fees and mileage expenses for witnesses summoned by such members on the same basis and to the same extent as if such witnesses were summoned before a district court of the United States.

(F) All decisions rendered by members of the Board shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to a member, unless all the parties to the claim agree in writing to an extension or unless the [President] *Administrator* extends the time limit pursuant to subparagraph (I) of this subsection.

(G) All decisions rendered by members of the Board shall be final, and any party to the proceeding may appeal such a decision within thirty days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the arbitral hearing took place. In any such appeal, the award or decision of the member of the Board shall be considered binding and conclusive, and shall not be overturned except for arbitary or capricious abuse of the member's discretion: *Provided, however,* That no such award or decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any other provision of this Act or under any other provision of law. Nor shall any prearbitral settlement reached pursuant to subsection (b)(2)(A) of this section be admissible as evidence in any such proceeding.

(H) Within twenty days of the expiration of the appeal period for any arbitral award or decision, or within twenty days of the final judicial determination of any appeal taken pursuant to this subsection, the [President] *Administrator* shall pay any such award from the Fund. The [President] *Administrator* shall determine the method, terms, and time of payment.

(I) If at any time the [President] *Administrator* determines that, because of a large number of claims arising from any incident or set of incidents, it is in the best interests of the parties concerned, he may extend the time for prearbitral negotiation or for rendering an arbitral decision pursuant to this subsection by a period not to exceed sixty days. He may also group such claims for submission to a member of the Board of Arbitrators.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

(3) Upon request of the [President] *Administrator* the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

[(d) claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.]

(d) STATUTE OF LIMITATIONS.—

(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) 6 years after the date of completion of all response action.

(2) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incomponent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

LITIGATION, JURSIDICTION AND VENUE

SEC. 113. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in [subsection] *subsections,* (a) *and (i)* of this section, the United States district courts shall have exclusive original jurisdiction over all controveries arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District Columbia.

(c) The provisions of subsection (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

(f) NATIONWIDE SERVICE.—In any action by the United States under section 106 or 107, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(g) CONTRIBUTION.—

(1) CONTRIBUTION.—Except as provided in paragraph (2), any defendant alleged or held to be liable in an action under section 106 or section 107 may bring an action for contribution or indemnity against any other person liable to potentially liable. In any such action in a court of the United States the Federal

Rules of Civil Procedure shall apply. Except as provided in paragraph (2) of this subsection, this subsection shall not impair any right of contribution or indemnity under existing law.

(2) SETTLEMENT.—When a party has resolved its liability to the United States or a State in a judicially approved good-faith settlement, such person shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other parties unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

(3) PERSONS NOT PARTIES TO SETTLEMENT.—Nothing in this subsection shall affect or modify in any way the rights of—

(A) the United States,

(B) a State, or

(C) any person that has resolved its liability to the United States or a State in a good-faith settlement,

to seek contribution or indemnification against any persons who are not party to a settlement referred to in paragraph (2). Any contribution action brought under this subsection shall be governed by Federal law. In any such action under this subsection for contribution the rights of a State and person referred to in subparagraph (C) shall be subordinated to the rights of the United States.

(h) STATUTE OF LIMITATIONS.—

(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraph (3), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 6 years after the later of the following—

(A) The date of the discovery of the loss.

(B) The date on which regulations are promulgated under section 301(c).

(2) ACTIONS FOR RECOVERY OF COSTS.—No action may be commenced under section 107 for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of the response action. Except as provided in the preceding sentence, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

(5) MINORS AND IMCOMPETENTS.—The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when he reaches eighteen years of age or the date on which a legal representative is duly appointed for him, or

(B) against an incompetent person until the earlier of the date on which his incompetency ends or the date on which a legal representative is duly appointed for him.

(i) Timing of Review.—No court shall have jurisdiction to review any challenges to removal or remedial action selected under section 104 or any order issued under section 104(b) or to review any order issued under section 106(a), in any action other than one of the following:

(1) An action under section 107 to recover response costs or damages or for contribution or indemnification.

(2) An action to enforce an order issued under section 104(b) or 106(a) or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 106(b)(2).

(4) An action under section 310 of this Act alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to an ongoing removal where a remedial action is to be undertaken at the site.

(5) An action under section 106 for injunctive relief or a motion to review the Administrator's selection of the remedy under a consent decree which has been entered under section 106 and in which a potentially responsible person has made a commitment to undertake a remedial investigation and feasibility study and to implement the remedial action decision of the Administrator following review.

(j) Administrative Record.—

(1) Limitation.—In any judicial action under section 106 or 197, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Administrator shall be limited to the administrative record. The objections which may be raised in any such judicial action under section 106 or 107 must be based upon the comments received and the evidence contained in the record.

(2) Standards.—In considering such objections, the court shall uphold the Administrator's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award only the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan.

(4) Procedural errors.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Participation Procedures.—

(1) Regulations.—The Administrator shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which judicial review of response actions will be based. For remedial actions, such regulations shall include procedures for providing each of the following, before adoption of any plan for remedial action to be undertaken by the United States or a State or any other person under section 104 or section 106 of this Act—

(A) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(B) A reasonable opportunity to comment and provide information regarding the plan.

(C) An opportunity for a public meeting in the affected area.

(D) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under such procedures.

(E) Agency support for the basis and purpose of the selected action.

The administrative record shall include the items developed and received pursuant to the procedures established under this subsection.

RELATIONSHIP TO OTHER LAW

Sec. 114. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

[(c) Except as provided in this Act, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenus for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.]

(c) State Funds.—Notwithstanding any provision of this or any other law, a State may require any person to contribute to any fund the purpose of which is to pay for any costs of response or damages.

(d) Except as provided in this title, no owner or opreator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirments of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

AUTHORITY TO DELEGATE, ISSUE REGULATIONS

SEC. 115. The [President] *Administrator* is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

SEC. 116. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

(a) ESTABLISHMENT.—There is hereby established within the Public Health Service an agency, headed by an Administrator, to be known as the Agency for Toxic Substances and Disease Registry (ATSDR). The Administrator of ATSDR shall report to the Secretary of the Department of Health and Human Services.

(b) DUTIES.—The Administrator of the ATSDR shall, with the cooperation of—

(1) the Administrator of the Environmental Protection Agency,

(2) the Commissioner of the Food and Drug Administration,

(3) the Directors of the National Institutes of Health, the National Institute of Environmental Health Sciences, the National Institute of Occupational Safety and Health, and the Center for Disease Control,

(4) the Administrator of the Occupational Safety and Health Administration,

(5) the Administrator of the Social Security Administration, and

(6) The Secretary of Transportation, effectuate and implement the health-related authorities of this Act.

(c) LIST OF RESTRICTED AREAS.—In cooperation with the States and other agencies of the Federal Government, the Administrator of the ATSDR shall establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of contamination by hazardous substances or pollutants or contaminants.

(d) LIST OF SUBSTANCES.—

(1) INITIAL 100.—The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR but within 6 months after enactment of this section, shall prepare a list of at least 100 hazardous substances or pollutants or contaminants which are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priority List or at facilities to which a response to a release or a threatened release under section 104 is under consideration.

(2) Revision.—Within 24 months after the enactment of this section, the Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall revise the list prepared under paragraph (1). Such revision shall include the addition of 100 or more such hazardous substances or pollutants or contaminants. The Administrator of the Environmental Protection Agency, in consultation with the Administrator of ATSDR, shall not less often than once every year thereafter revise such list based upon new information concerning the potential for human exposure to hazardous substances, pollutants, or contaminants at locations specified in paragraph (1) and their known or suspected toxicity to humans.

(e) Information on Health Effects.—

(1) Literature, studies, etc.—The Administrator of ASTDR shall establish and maintain an inventory of research literature, reports, and studies on the health effects of each hazardous substance or pollutant or contaminant listed pursuant to subsection (d).

(2) Toxicological profiles.—Based on all available information, including information maintained under paragraph (1) and data developed and collected on the health effects of hazardous substances or pollutants or contaminants under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to subsection (d). The toxicological profiles shall be prepared in accordance with guidelines developed jointly by the Administrator of the Environmental Protecton Agency and the Administrator of ATSDR. Such profiles shall include, but not be limited to—

(A) the examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance or pollutant or contaminant in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects; and

(B) a determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health or acute, subacute, and chronic health effects.

The profiles required to be conducted under this paragraph for those hazardous substances or pollutants or contaminants listed in paragraph (1) of subsection (d) shall be completed, at a rate of 25 per year, within 4 years after the enactment of this section. Additional profiles required on substances listed pursuant to this paragraph shall be completed at a rate of no less than 25 per year. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(3) Health effects research.—For any hazardous substance or pollutant or contaminant for which adequate information is not available (or for which such information is under development as determined under paragraph (2)(B)), the Administrator of ATSDR shall assure the initiation of a program of research

designed to determine the health effects of such hazardous substance or pollutant or contaminant. Where feasible, such program shall seek to develop methods to determine the health effects of such hazardous substance or pollutant or contaminant in combination with other hazardous substances or pollutants or contaminants with which it is commonly found.

(4) COORDINATION.—In the development and implementation of any research program under this subsection, the Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate such research program implemented under this paragraph with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances or pollutants or contaminants listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate in the discretion of the Administrator of the Environmental Protection Agency and consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(f) HEALTH ASSESSMENTS.—

(1) FACILITIES ON NPL.—The Administrator of ATSDR shall perform a health assessment for each facility on the National Priority List (NPL) established under section 105 which meets each of the following criteria:

(A) the presence of a hazardous substance or pollutant or contaminant has been confirmed at the facility.

(B) Pathways of human exposure to hazardous substances or pollutants and contaminants have been demonstrated to exist at the facility, especially if such pathways involve direct contact with hazardous substances or pollutants or contaminants.

(C) There exists a significant possibility that a human population has been exposed to hazardous substances or pollutants or contaminants through the identified pathways and there may exist a significant threat of current or future adverse health effects of or the population so exposed.

The determination of whether any facility on the NPL meets such criteria shall be based on information provided by the Administrator of the Environmental Protection Agency regarding such criteria. Nothing in this paragraph shall preclude the Administrator of the ATSDR from performing, where appropriate and consistent with the National Continency Plan, health assessments of releases of hazardous substances or pollutants or contaminants from any other facilities, including facilities which are not listed on the NPL. The Administrator of the Environmental Protection Agency or any State may request the Administrator of ATSDR to perform a health assessment under this section. The Administrator of ATSDR and the Administrator of the Environmental Protection Agency shall coordinate the performance of health assessments under this section.

(2) PETITION TO ADMINISTRATOR OF EPA.—Any individual or group of individuals may submit a petition to the Administrator of the Environmental Protection Agency to perform a health assessment under this subsection. The petition shall provide evidence demonstrating that such individual or group is being exposed to a hazardous substance, and an empirical analysis of the level of exposure. The Administrator shall take action under paragraph (3)(A) if the Administrator determines that there is a reasonable likelihood that a hazardous substance is from one of the following facilities and that there is a reasonable likelihood that the exposure may present a significant risk to human health:

(A) A facility where such substance is (or was in the past) treated, stored, recycled, or dispose of, on a regular basis.

(B) A facility at which removal action is being taken (or was taken in the past) under any provision of this Act.

(3) INITIATION OR EXPLANATION REQUIRED.—Within 45 days after receipt of a petition under paragraph (2), the administrator of the Environmental Protection Agency (or the Administrator of the Agency for Toxic Substances and Disease Registry if designated by the Administrator of the Environmental Protection Agency) shall do one of the following:

(A) Initiate a health assessment.

(B) Publish a written explanation of one of the following:

(i) A determination that there is not a reasonable likelihood that the substance is from a facility referred to in paragraph (2).

(ii) A determination that there is not a reasonable likelihood that the exposure presents a signficant risk to human health.

(iii) A determination that the evidence submitted or information available to the Environmental Protection Agency is not adequate to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure presents a significant risk to human health. If the Administrator determines under this clause that the evidence submitted is not adequate, the Administrator shall, in the written explanation, identify the additional information necessary for the Administrator to determine whether there is a reasonable likelihood that the substance is from a facility referred to in paragraph (2) or there is a reasonable likelihood that the exposure may present a significant risk to human health.

(C) Respond in writing to the petition submitted under paragraph (2) by setting forth a schedule for review of the petition or a schedule to initiate a health assessment.

Each assessment under this paragraph shall be completed within 6 months after the date on which the health assessment is initiated.

(4) PRIORITIES OF ASSESSMENTS.—In determining the priority in which to conduct health assessments under this subsection, the Administrator of the Environmental Protection Agency, in

consultation with the Administrator of ATSDR, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances or pollutants or contaminants, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in paragraph (7).

(5) RIFS.—Where a health assessment is done at an NPL site, the Administrator of the ATSDR shall, to the maximum extent practicable, complete health assessments before the completion of the remedial investigation and feasibility study at the facility concerned.

(6) NOTICE AND REPORTING.—Any State or political subdivision carrying out a health assessment shall report the results of the assessment to the Administrator of ATSDR and the Administrator of the Environmental Protection Agency and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall include the same recommendation in any report on the results of any assessment carried out directly by the ATSDR, and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(7) DEFINITION.—For the purposes of this section and section 111(c)(4), the term "health assessment" means a determination of the potential individual and population human health risks posed by individual facilities. A health assessment shall be based on but not limited to the following information.

(A) The nature and extent of contamination.

(B) The existence, scope, and magnitude of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination).

(C) The size and potential susceptibility of the community within the likely pathways of exposure.

(D) The comparison of measured or estimated human exposure levels which are indentified for hazardous substances or pollutants or contaminants and any exposure levels for such hazardous substances or pollutants or contaminants which are determined to be of significance to human health, including but not limited to those determined in the toxicological profiles under subsection (e)(2).

(E) The comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.

An assessment may include literature searches, information summarization and evaluation of existing environmental data, pilot samples, testing for food chain contamination, and similar activities. The Administrator of the ATSDR shall utilize appropriate data available from the Administrator of the Environmental Protection Agency to avoid duplication of effort.

(8) PURPOSE.—The purpose of such health assessments shall be to assist in determining whether actions under subsection (k) of this section should be taken to reduce human exposure to

hazardous substances or pollutants or contaminants from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under subsection (g), establishing a registry under subsection (h), establishing a health surveillance program under subsection (i), or through other means. In using the results of such health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances or pollutants or contaminants including known point or nonpoint sources other than those from the facility in question.

(9) RESULTS AND RECOMMENDATIONS.—At the completion of each health assessment the Administrator of ATSDR shall provide the Administrator of the Environmental Protection Agency and each affected State with the results of such assessment, including recommendations concerning the need to further reduce exposure.

(10) RECOVERY OF COSTS.—In any case in which a health assessment performed under this subsection (including one required by section 3019(b) of the Solid Waste Disposal Act) discloses the exposure of a population to the release of a hazardous substance or pollutant or contaminant from a facility, the costs of such health assessment may be recovered as a cost of response under section 107 of this Act.

(g) STUDIES.—

(1) PILOT STUDIES.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals, in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(2) FULL SCALE.—Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances or pollutants or contaminants from a release or suspected release.

(h) REGISTRY.—In any case in which the results of a health assessment or epidemiologic study indicate a potential or observed significant risk to human health, the Administrator of ATSDR shall evaluate whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection. The Administrator of ATSDR shall establish such registry when such evaluation determines that an effective mechanism can be established to satisfactorily maintain such registry over a sufficient period of time to accomplish the desired purposes of this paragraph and either—

(1) the registry could benefit its participants by prevention or early detection of serious adverse health effects from exposure to hazardous substances or pollutants or contaminants; or

(2) the registry could provide significant information not currently available on human health effects of exposure to one or more hazardous substances or pollutants or contaminants.

(i) HEALTH SURVEILLANCE PROGRAM.—Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances or pollutants or contaminants based on the results of a health assessment conducted under subsection (f), an epidemiologic study conducted under subsection (g), or an exposure registry that has been established under subsection (h), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(1) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

(2) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(j) REPORT EVERY 2 YEARS.—Two years after the enactment of this subsection and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of the Environmental Protection Agency, the House Committee on Energy and Commerce and the Senate Committee on Environment and Public Works a report on the results on the Agency's activities regarding—

(1) health assessments conducted;

(2) epidemiologic studies conducted;

(3) hazardous substances or pollutants or contaminants which have been listed under subsection (d), toxicologic profiles which have been developed and toxicologic testing which has been conducted or which is being conducted under subsection (e);

(4) registries established under subsection (h); and

(5) an overall assessment, based on the results of activities conducted by the Administrator of the ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances or pollutants or contaminants due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

(k) REDUCTION OF EXPOSURE.—

(1) SIGNIFICANT HUMAN EXPOSURE LEVEL.—If a health assessment, other study, or evaluation carried out under this Act identifies an individual or individuals exposed to a hazardous substance or pollutant or contaminant in a manner which presents a significant risk to human health, the Administrator of the Environmental Protection Agency shall take such steps as may be necessary to abate this risk. Such steps may include the following:

(A) Provision of alternate household water supplies.

(B) Temporary or permanent relocation of individuals.

(2) Insufficient information.—In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the Administrator of the Environmental Protection Agency to determine a significant human exposure level with respect to a hazardous substance or pollutant or contaminant, the Administrator of the Environmental Protection Agency may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance or pollutant or contaminant to such level as the Administrator of the Environmental Protection Agency deems necessary to protect the human health.

(l) No Delay of Other Action.—In the case of any hazardous substance or pollutant or contaminant which is subject to a petition under this section, nothing in this section shall be construed to delay or otherwise impair the authority of the Administrator of the Environmental Protection Agency to exercise any authority vested in the Administrator of that Agency under any other provision of law, including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act or the response and abatement authorities of this Act.

(m) Peer Review.—All studies and results of research conducted under this section (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be scientific experts selected for such purpose by the Administrator of ATSDR on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the ATSDR.

(n) Educational Materials.—In the implementation of this section and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances or pollutants or contaminants (giving priority to those listed in subsection (d)), through such means as the Administrator of ATSDR deems appropriate.

(o) Direct Action and Cooperative Agreements.—The activities described in this section and section 111(c)(4) shall be carried out by the Administrator of the ATSDR established by subsection (a), either directly or through cooperative agreements with States (or political subdivisions thereof) in the case of States (or political subdivisions) which the Administrator of the ATSDR determines are capable of carrying out such activities. Such activities shall include provision or consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(p) Adequate Personnel.—The President shall provide for the employment of an adequate number of officers and employees in the

ATSDR, based upon the amount made available to such agency for each fiscal year and taking into account the recommendations of such agency.

(q) FEDERAL FACILITIES.—In accordance with section 107(g), the Administrator of the ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as such Administrator has with respect to any nongovernmental entity.

(r) EMERGENCIES.—In cases of public health emergencies caused or believed to be caused by exposure to toxic substances, the Administrator of the ATSDR shall provide medical testing and care to exposed individuals, including, but not limited to, tissue sampling, chromosomal testing, epidemiological studies, or any other assistance appropriate under the circumstances. Nothing in this subsection shall be construed to create an entitlement program.

(s) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services, in consultation with the Administrator of the Environmental Protection Agency may conduct and support the following (through grants, cooperative agreements, and contracts)—

(A) Research (including epidemiologic and ecologic studies and development and demonstration programs) in the following—

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and methods and technologies to reduce the amount and toxicity of hazardous substances, including recycling, incineration, biodegradation, chemical inactivation, and encapsulation.

(iv) Site specific demonstrations of innovative technologies applied to all phases of hazardous substances response including, as appropriate, the testing, evaluation, and field demonstration of innovative technologies, processes, equipment, and related devices which can be used for such purposes. Such activities may be conducted at National Priorities List Site.

(v) Improved safety practices in, and equipment for the handling and disposal of hazardous substances.

(B) Training for the following—

(i) For employees who handle hazardous substances, training in the procedures for the handling and removal of hazardous substances.

(ii) For State and local health and environment agency personnel, training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities.

(C) Advanced training in the fields enumerated in subparagraph (A), including ecology, environmental health, chemical engineering, and molecular biology.

(2) The Director of NIEHS shall cooperate fully with those agencies specified in paragraph (5)(A)-(F) in carrying out the purposes of this section.

(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with the following—

(A) Generators of hazardous wastes.

(B) Persons involved in the development of innovative technologies, processes, equipment, and related devices, which can be used to control, contain, and treat hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences who shall follow the procedures applicable to grants and contracts under title IV of the Public Health Service Act.

(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection, the Secretary shall appoint an advisory council which shall consist of the following—

(A) The Assistant Administrator of the Environmental Protection Agency for the Office of Research and Development who shall serve as chairman.

(B) The Assistant Administrator of the Environmental Protection Agency for Hazardous Waste and Environmental Response.

(C) The Director for the Center for Environmental Health in the Centers for Disease Control.

(D) The Director of the National Institute for Occupational Safety and Health.

(E) The Director of the National Cancer Institute.

(F) The Administrator of the ATSDR.

(G) The Director of the National Center for Toxicologic Research of the Food and Drug Administration.

(H) A representative of the toxic chemical waste producing industry.

(I) A representative of entities engaged in the management of toxic chemical wastes.

(J) Three representatives of institutions of higher education (one from the field of medicine, one from the field of chemical engineering, and one from the field of biological sciences).

(K) Two representatives from State and local health or environmental agencies.

(L) One representative from community based organizations concerned with hazardous substances.

(M) One representative with scientific expertise from a national environmental organization concerned with hazardous substances.

(6) PLANNING.—Within one year after the date of the enactment of this subsection the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The plan shall also include consideration of the development and evaluation of clean-up technologies to meet the standards set under section 121. The advisory council appointed under paragraph (4) shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordinating among those agencies specified in subparagraphs (A) through (G) of paragraph (5).

SEC. 117. PUBLIC PARTICIPATION.

(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the Administrator or by a State or by any other person at any site, the Administrator or State, as appropriate shall take both of the following actions—

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any waivers under section 121 (relating to cleanup standards). The Administrator shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan.

(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan, if any remedial action is taken, if any enforcement action under section 106 is taken, or if any settlement or consent decree under section 106 is entered into and if such, settlement, or decree differs in any significant respects from the final plan, the Administrator shall publish an explanation of the significant differences and the reasons such changes were made.

(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.

(e) GRANTS FOR TECHNICAL ASSISTANCE.—

(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National priorities List under the National Contingency Plan. Such grants shall be for the purpose of enabling the group to obtain technical assistance to review and assess date and information which has been prepared by the Administrator with respect to such facility and which is required to be published under this subsection.

(2) AMOUNT.—The amount of any grant under this subsection may not exceed $25,000 for a single grant recipient. The Administrator may waive the $25,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least $\frac{1}{5}$ *of the total of costs of the expert advice and technical assistance for which such grant is made. The Administrator may waive the* $\frac{1}{5}$ *contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this paragraph with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.*

SEC. 118. GENERAL PROVISIONS RELATING TO RESPONSE UNDER TITLE I.

(a) SCOPE OF PROGRAM.—The Administrator shall not respond under this Act to any of the following—

(1) A release or threat of a release of a hazardous substance or pollutant or contaminant from residential dwellings or businesses or community structures where such dwellings or structures are not used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances.

(2) A release or threat of a release of a hazardous substance or pollutant or contaminant into public or private drinking water supplies due to deterioration of the system through ordinary use.

(3) A release or threat of a release of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found.

(4) A release or threat of a release resulting exclusively from the mining of coal for which a timely response action is available and authorized under the Surface Mine Control and Reclamation Act of 1977.

Notwithstanding the preceding provisions of this subsection, the Administrator may respond under this Act to any release or threat of release of a hazardous substance or pollutant or contaminant in any form if he determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergen-

cy. As used in this subsection, the term 'respond under this Act' includes response action under section 104 and abatement action under section 106.

(b) HIGH PRIORITY FOR WELLS AND CERTAIN AQUIFERS.—For purposes of taking action under section 104 or section 106 and listing facilities on the National Priorities List, the Administrator shall give high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under section 1424(e) of title XIV of the Public Health Service Act (the Safe Drinking Water Act).

(C) DETERMINATION TO USE OFFSITE REMEDIAL ACTION.—Whenever any remedial action is undertaken under section 104 (or any action is undertaken under section 106), in determining whether or not to utilize offsite transport and offsite storage, treatment, destruction, or secure disposition, the Administrator shall take each of the following into account—

(1) The long-term uncertainties associated with land disposal.

(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(4) Short- and long-term potential for adverse health effects from human exposure.

(5) The long-term maintenance costs of alternative remedial actions.

(6) The risks associated with excavation, transportation, and disposal.

SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

(1) IN GENERAL.—Notwithstanding the provisions of section 114, no person who is a response action contractor with respect to any release or threatened release of a hazardous substance or a pollutant or contaminant from a vessel or facility shall be liable under this title, under any other Federal law, under the law of any state or political subdivision, or under common law to any person for injuries, costs, damages, expenses or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that was caused by conduct of the response action contractor which was negligent reckless, or intentional misconduct.

(3) PERSONS RETAINED OR HIRED.—Any person retained or hired by a response action contractor to provide any services relating to response action shall have the same exemption from liability provided to the response action contractor.

(b) SAVINGS PROVISIONS.—

(1) LIABILITY OF OTHER PERSONS.—Nothing in this subsection shall affect the liability under this Act or under any other au-

thority of Federal or State law of any person other than a response action contractor.

(2) Burden of plaintiff.—Nothing in this section shall affect the plaintiff's burden of establishing the liability under this title.

(C) Exception to Exemption.—The exemption provided under subsection (a) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if he had not carried out any actions referred to in subsection (d) of this section.

(d) Definition.—For purposes of this section, a person is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility if such person is carrying out a written contract or agreement with—

(1) the Administrator;

(2) any other Federal agency;

(3) a State; or

(4) any potentially responsible party, as defined by section 122;

to provide any response action under this Act or to provide any evaluation, planning, engineering, design, construction, equipment, or any ancillary services thereto for such vessel or facility.

(e) Competition.—To protect the health and safety of the public and to assure the selection of technically superior response action contractors, no potential offeror of a bid or proposal for a contract, subcontract or cooperative agreement to be performed and funded under the authority of this Act shall be denied the opportunity to compete for such contracts. Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures or equivalent State requirements shall apply to appropriate contracts negotiated by all governmental agencies involved in carrying out this Act under Memoranda of Understanding, State cooperative agreements, or other means. Such procedures (or equivalent requirements) shall be followed by response action contractors and subcontractors.

SEC. 120. FEDERAL FACILITIES.

(a) Application of Act to Federal Government.—

(1) In general.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act.

(2) Application of guidelines, etc., to federal facilities.—All guidelines, rules, regulations, procedures, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the

National Contingency Plan, Applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or uitilize any such guidelines, rules, regulations, procedures, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List.

(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of that Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—

(1) ESTABLISHMENT.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States which shall contain each of the following—

(A) The inventory required to be submitted by that department, agency, or instrumentality in accordance with section 3016 of the Solid Waste Disposal Act and subsection (b) of this section.

(B) Information submitted by the department, agency, or instrumentality under section 3005 or 3010 of that Act.

(C) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

(2) INSPECTION.—The docket established under this subsection shall be available for public inspection at reasonable times. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the Docket under this subsection.

(3) PERIODIC NOTICES.—6 months after establishment of the Docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the Docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the Docket.

(d) EVALUATION.—

(1) DEADLINE.—Not later than January 31, 1987, where the Administrator determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment, the Administrator shall evaluate each facility included in the Docket in accordance with the criteria established under the National Contingency Plan for determining priorities among releases for inclusion on the National Priorities List. Upon the receipt of a petition from the Governor of any State the Administrator shall make such an evaluation of any facility included in the Docket.

(2) DEADLINE FOR INCLUSION.—Within 12 months after completion of the evaluation of a facility, the Administrator shall include the facility on the National Priorities List if the facility meets the criteria for inclusion on such list. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons.

(e) REQUIRED ACTION BY DEPARTMENT.—

(1) RIFS.—Not later than 6 months after the inclusion of any facility on the National Priorities List (NPL), the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a remedial investigation and feasibility study (RIFS) for such facility. In the case of any facility which is listed on the NPL before that date of enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator, commence a RIFS for such facility within 1 year after such date of enactment.

(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each RIFS conducted as provided in paragraph (1). Within 180 days thereafter the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the RIFS. For purposes of completing the remedial action as promptly as practicable, each department, agency, or instrumentality shall request adequate funding in the President's annual budget submittal to the Congress. For purposes of public participation in accordance with section 117, the proposal of a plan for remedial action in an interagency agreement shall be treated as the proposal of a plan for remedial action and the adoption of such an agreement shall be treated as the adoption of a final plan.

(3) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to each of the following—

(A) A review of alternative remedial actions and selection of a remedial action plan, including construction design by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

The concurrence of the State in which the facility is located shall be required for the selection of the remedial action to be carried out at that facility.

(4) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to each of the following items—

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A report on progress in conducting RIFS.

(D) A report on progress in conducting remedial actions.

(f) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the Administrator or otherwise, to any other officer or employee of the United States or to any other person.

(g) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

(1) NOTICE.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any federally regulated hazardous substance was disposed of or stored for one year or more, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage or disposal took place.

(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the date of the enactment of this subsection but not later than 18 months after such date of enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) CONTENTS OF CERTAIN DEEDS.—After 6 months after the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United

States on which any hazardous substance was disposed of or stored for one year or more, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain a notice of the type and quantity of such hazardous substances, notice of the time at which such disposal or storage took place, and a description of remedial action taken, if any.

(h) Obligations Under Solid Waste Act.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

(i) State Coordinator.—A State may request and be granted by the Administrator the role of on-scene coordinator for federal facility projects within its boundaries. The necessary and reasonable expenses of the on-scene coordinator shall be paid to the State by the Agency.

SEC. 121. CLEANUP STANDARDS.

(a) Duty of Administrator.—The Administrator shall select appropriate cost-effective remedial actions to be carried out under section 104 or secured under section 106. Such actions shall be in accordance with the National Contingency Plan and shall be in accordance with the requirements of this section.

(b) Level or Standard of Control.—Any remedial action selected under section 104 or secured under section 106 for a facility at which a release or threatened release occurs shall require that level or standard of control of each hazardous substance or pollutant or contaminant at that facility which is necessary to protect human health and environment.

(c) Selection of Remedial Action.—In selecting a remedial action under section 104 or to be secured under section 106, the Administrator shall evaluate alternatives which achieve the requirements of subsection (b) and shall assess the cost-effectiveness of such alternatives. In making such assessment, the Administrator shall specifically assess the long-term effectiveness of various alternatives, including an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant, taking into account each of the following—

(1) The long-term uncertainties associated with land disposal.

(2) The goals, objectives, and requirements of the Solid Waste Disposal Act.

(3) The persistence, degradability in nature, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents.

(4) The potential threat to human health and the environment associated with excavation, transportation, and redisposal.

(5) Short- and long-term potential for adverse health effects from human exposure.

(6) Long-term maintenance costs.

Following an evaluation under this subsection, the Administrator shall select that cost-effective remedial action which, to the maximum extent practicable, utilizes such permanent solutions and alternative treatment technologies or resource recovery technologies.

(d) ONSITE REMEDIAL ACTION.—

(1) IN GENERAL.—This subsection shall apply only to hazardous substances or pollutants or contaminants which remain onsite. If any standard under one or more provisions of the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act is applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance or pollutant or contaminant, any remedial action selected under section 104 or section 106 shall require a level or standard of control for such hazardous substance or pollutant or contaminant which is at least equivalent to such standard. In requiring a level or standard of control for such hazardous substance or pollutant or contaminant the Administrator shall consider other relevant factors, including any water quality criteria under the Federal Water Pollution Control Act and any tolerance levels established under the Federal Food, Drug and Cosmetic Act, which are applicable to that hazardous substance or pollutant or contaminant.

(2) CONTAMINATION FROM OTHER SOURCES.—The level or standard of control required in accordance with this section shall be required only regarding remedial actions taken with respect to the release or threatened release of a hazardous substance or pollutant or contaminant from the facility concerned and shall not be applicable to contamination from other sources.

(e) OFFSITE REMEDIAL ACTION.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the facility is operating in compliance with such sections and only if the Administrator determines that the facility is not releasing hazardous waste or constituents thereof into the groundwater or that any such release is being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act. As used in this subsection, (1) the term "land disposal" has the meaning provided by section 3004 of the Solid Waste Disposal Act and (2) the term "hazardous waste" means hazardous waste listed or identified under section 3001 of that Act.

(f) WAIVERS.—The Administrator may waive the application of the requirements of subsection (d) with respect to any facility and select alternative remedial or abatement action which does not comply with such requirements if the Administrator makes any of the following findings—

(1) The Administrator finds that such alternative remedial or abatement action will provide protection of human health and the environment and is substantially equivalent to the remedial or abatement action which would be necessary to comply with such requirements.

(2) The Administrator finds that compliance with the requirements of subsection (d) at that facility will result in greater risk to human health or the environment than alternative options. This finding shall be on the basis of a quantitative assessment to the maximum extent possible.

(3) The Administrator finds that compliance with the requirements is technically impracticable from an engineering perspective.

(4) The Administrator finds that compliance with such requirements at that facility will consume a disproportionate share of the Fund, taking into account the size and complexity of the facility and benefits to public health and the environment which may be obtained through other uses under this Act of the sums available in the Fund which would be expended to comply with such requirements.

(5) The Administrator finds that the response action is an interim measure prior to final remedial action at the facility.

A finding under this subsection may also be made with respect to remedial action financed in whole or in part by private parties. In such case, the finding shall be made on the basis of the same considerations as would be used with respect to remedial action financed by the Fund.

(g) LIMITATION ON WAIVERS.—No waiver may be granted by the Administrator under subsection (f) for any facility—

(1) at which a release has caused damages to natural resources, compensation for which is sought by the United States Government pursuant to section 107(f) through a claim presented prior to January 1, 1984; and

(2) which has been designated by a State pursuant to section 105(a)(8)(B) as being the facility that presents the greatest danger to public health or welfare or the environment within that State;

unless the Governor of that State has agreed, in writing to the terms and conditions of such a waiver.

(h) PERMITS FOR ONSITE CLEANUP.—

(1) FEDERAL.—No permit shall be required under Federal law for any response action undertaken by any person under section 104 or 106 at any facility to the extent that such action does not invovle the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

(2) STATE.—No permit shall be required under State or lcoal law for any response action undertaken under section 104 or 106 at the facility at which the release or threatened release occured. In selecting response action under this Act for such release or threatened release, the administrator shall consider any more stringent State standards relating to the level or standard for control for the hazardous substance or pollutant or contaminant concerned and any State law regarding the siting of facili-

ties used at the site of such response action. If the Administrator selects a response action which is not consistent with a more stringent State standard, the Administrator shall publish an explanation of the reasons for such decision. Following such publication, if the State determines that a more stringent State standard should be applicable to the response action and enters into an agreement with the Administrator to pay the additional costs attributable to compliance with the more stringent standard, the Administrator shall require the response action to conform to the more stringent State standard. The Administrator shall determine the amount of any additional costs which are attributable to compliance with the more stringent State standard in lieu of the standard which the Administrator would otherwise select. If any State pays any additional costs of complying with a State standard or requirement, the State may recover such costs from responsible parties pursuant to section 107.

(3) OFFSITE.—Nothing in this subsection shall be construed to affect any requirement of Federal, State, or local law to the extent such requirement applies to response action involving the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to another facility.

(4) FEDERAL FACILITIES.—Nothing in this subsection shall apply to any action undertaken pursuant to this Act at a facility which is owned or operated by a department, agency, or instrumentality of the United States. Nothing in this subsection or in any other provision of this Act shall preempt or otherwise affect the application of any Federal, State, or local law, including any permit requirement, to any response action undertaken at such a facility.

(5) STATE ENVIRONMENTAL IMPACT REQUIREMENTS.—Prior to commencement of a Remedial Investigation and Feasibility Study (RIFS), the Adminsitrator shall notify the State of such action. If within 60 days thereafter, the State notifies the Administrator of any State procedural requirements which would be applicable under State statutes requiring preparation of environmental impact statements, the Administrator shall, in consultation with the State, establish functionally equivalent procedures governing the preparation of RIFS which adopt such State requirements unless the State waives such requirements. Compliance with this subsection shall be deemed to be compliance with such State environmental impact statutes. This subsection shall take effect upon enactment of this section.

(i) DESTRUCTION OF DIOXIN WASTES.—

(1) TREATMENT TECHNOLOGY.—With respect to remedial actions involving hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans, the Administrator shall, to the maximum extent practicable, require treatment technology that provides each of the following:

(A) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(B) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(C) Protection against emissions of hazardous substances, pollutants, or contaminants into the air during normal operation and equivalent protection during nonsteady operations including start-up, shutdown, and power failures.

(D) Protection against secondary formation of halogenated dioxins and dibenzofurans.

(2) Requirements.—The requirements specified in paragraph (1) shall not apply if the Administrator determines that—

(A) an alternative method of treatment or disposal provides comparable or greater protection of human health and the environment, or

(B) there will be no human exposure to the hazardous substances, pollutants, or contaminants containing chlorinated or halogenated dioxins, or chlorinated or halogenated dibenzofurans.

(j) State Requirements Not Applicable to Certain Transfers.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(k) Value Engineering Review.—In any evaluation under this section of the cost effectiveness of a response action, the Administrator shall require value engineering review in accordance with this subsection. The Administrator shall require value engineering review for any response action to be carried out under this Act by the United States, a State or a political subdivision of a State if the cost of the response action, including the cost of removal and construction related to hazardous substances, pollutants, or contaminants, and including the cost of operation and maintenance, is projected to exceed $4,000,000. For purposes of this subsection, the term value engineering review means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

SEC. 122. SETTLEMENTS.

(a) EPA Authority To Enter Into Agreements.—The Administrator, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat or release emanates, or any other potentially responsible person), to perform any action described in subsection (b) of section 104 or in subsection (a) of section 106 if the Administrator determines that such action will be done properly by such person.

(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

(1) MIXED FUNDING.—An agreement under this section may provide that the Administrator will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the Administrator has agreed to finance.

(2) REVIEWABILITY.—The Administrator's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

(3) RETENTION OF FUNDS.—If, as part of any agreement, the Administrator will be carrying out any action and the parties will be paying amounts to the Administrator, the Administrator may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(c) EFFECT OF AGREEMENT.—

(1) LIMITATION OF LIABILITY.—Whenever the Administrator has entered into an agreement under this section, the liability under this Act of each party to the agreement, including any future liability arising from the release or threatened release that is the subject of the agreement, shall be limited as provided in the agreement. Nothing in this paragraph shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any limitation on liability contained in an agreement under this section.

(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the Administrator may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following—

(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

(B) The authority of the Administrator to maintain an action under section 106 or 107 against any person who is not a party to the agreement.

(d) ENFORCEMENT.—

(1) CLEANUP AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 106, following approval of the agreement by the Attorney General, the agreement shall be entered in the appropriate United States district court as a consent decree under that section. The Administrator need not make any finding regarding an imminent and substantial endangerment to the public health or welfare or the environment. The entry of any such decree shall not be construed to be an acknowledgement by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or the environment.

(2) 104(b) AGREEMENTS.—Whenever the Administrator enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the Administrator shall issue an order setting forth the obligations

of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order. Any party to an agreement under this section who fails or refuses to comply with the requirements of the order shall be liable for a civil penalty in an amount not to exceed $25,000 for each day during which such failure or refusal continues.

(e) Special Notice Procedures.—

(1) Notice.—Whenever the Administrator determines that a period of negotiation under this subsection would facilitate an agreement under this subsection with potentially responsible parties for taking action under subsection (b) of section 104, or action under section 106, the Administrator shall so notify all such parties and shall provide them with information concerning each of the following—

(A) The identity of other notice recipients.

(B) The volume and nature of hazardous substances at the facility, to the extent such information is available.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The Administrator shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the Administrator. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph.

(2) Negotiation.—

(A) Moratorium.—Except as provided in this subsection, the Administrator may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the Administrator may not commence action under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action.

(B) Proposals.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the Administrator for undertaking or financing the action under section 104(b).

(C) Additional parties.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the Administrator may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) Failure to propose.—If the Administrator determines that a good faith proposal for undertaking or financing action

under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsections, the Administrator may thereafter commence action under section 104(a) or take an action against any person under section 106 of this Act. If the Administrator determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days of the provision of notice pursuant to this subsection, the Administrator may thereafter commence action under section 104(b).

(4) SIGNIFICANT PUBLIC HEALTH THREATS.—Nothing in this subsection shall limit the Administrator's authority to undertake response action regarding a significant threat to public health within the negotiation period established by this subsection.

(f) RELEASE FROM LIABILITY.—

(1) COVENANT NOT TO SUE.—The Administrator may, in his discretion, provide any person with a covenant not to sue concerning any future liability under this Act resulting from a release or threatened release of a hazardous substance addressed by the remedial action, whether that action is onsite or offsite, if each of the following conditions are met—

(A) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

(B) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(C) The response action has been approved by the Administrator.

(2) FACTORS.—In assessing the appropriateness of a covenant not to sue, the Administrator shall consider whether the covenant is in the public interest on the basis of such factors as the following—

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(3) CONTINGENCY FUND.—The other sources of funding referred to in paragraph (2)(E) may include any premiums paid to the Administrator by persons obtaining covenants under this section. Notwithstanding any other provision of law, the Administrator shall place such premiums in a contingency fund established by the Administrator under this paragraph. The Administrator may use the amounts placed in the contingency fund to carry out future remedial action under this section with

respect to facilities which are subject to covenants not to sue under this subsection.

(g) De Minimis Settlements.—Nothing in this Act shall be construed to prohibit the Administrator (in an action under section 106 or section 107 of this Act) from reaching final settlements with, and granting releases from liability to, any potentially responsible party in such an action where such settlement does not involve a substantial portion of the response costs at the facility concerned if both of the following are minimal in comparison to other hazardous substances at the facility—

(1) The amount of the hazardous substances contributed by that party to the facility.

(2) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(h) Natural Resources.—

(1) Notification of trustee.—Where a release of threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the Administrator shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) Release from liability.—An agreement under this section may grant a release from liability to the United States under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such release from liability. The Federal natural resource trustee may agree to such release from liability if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(i) Definition of Potentially Responsible Party.—As used in this section, the term potentially responsible party means, with respect to any release or threatened release, a person against whom an action could be brought under section 106 with respect to such release or a person who would be liable under section 107 if response costs were incurred by the Administrator with respect to such release or threatened release.

(j) Section Not Applicable to Vessels.—The provisions of this section shall not apply to a release from a vessel.

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Application.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the Administrator for reimbursement under this section.

(b) Reimbursement.—In accordance with rules promulgated by the Administrator, the Administrator is authorized to reimburse local community authorities for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the re-

lease or threatened release of hazardous substances or pollutants or contaminants. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(c) AMOUNT.—The amount of any reimbursement to any local authority under this section may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which such facility is located. During the 5-fiscal year period commencing September 1, 1985, not more than 0.1 percent of the total amount available in the Hazardous Substances Superfund may be used for the purposes of this section. Expenditures for reimbursement under this section shall be treated as costs of response for purposes of section 111.

SEC. 124. LANDFILL GAS OPERATORS.

(a) EXEMPTION FROM CERTAIN LIABILITY.—Notwithstanding the provisions of section 114, no landfill gas operator shall be liable in an action under section 106 or 107 of this Act, including an action for contribution or indemnification, for injuries, costs, damages, expenses, or other liability referred to in subsection (b), for costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances.

(b) EXTENT OF EXEMPTION.—The exemption under this section shall apply to all injuries, costs, damages, expenses, for other liability asserted under section 106 or 107 of this Act, or costs of cleanup, removal, response and remedial actions and claims for natural resource damages under the laws of any State or political subdivision which impose liability or requirements with respect to the release of hazardous substances resulting from a release or threatened release of a hazardous substance or pollutant or contaiminant from a facility unless such release was caused by conduct of the landfill gas operator which was negligent, reckless, or intentional misconduct. This exemption shall not apply to any landfill gas operator covered by the provisions of paragraph (1), (2), (3) or (4) of subsection (a) of section 107 with respect to the release or threatened release concerned if the landfill gas operator would be covered by those provisions if he were not a landfill gas operator.

(c) LIABILITY OF OTHER PERSONS.—Nothing in this section shall affect the liability under this Act or under any authority of Federal or State law of any person other than a landfill gas operator.

(d) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under section 106 or 107 of this Act.

(e) CONDENSATE.—

(1) EXCLUSION.—Except as provided in paragraph (2), no landfill gas operation shall be deemed to be management, generation, transportation, treatment, storage, or disposal of any hazardous or liquid waste within the meaning of subtitle C of the Solid Waste Disposal Act.

(2) REGULATION.—If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from gas recov-

ered from a landfill meets any of the characteristics identified under section 3001 of the Solid Waste Disposal Act, such condensate phase or other waste material shall be deemed a hazardous waste under subtitle C of the Solid Waste Disposal Act, and shall be regulated accordingly under that subtitle.

(3) RETURN OF CONDENSATE.—Condensate removed from gas recovered by a landfill gas operator shall not be returned to the landfill in a container, unless treated so that it is no longer a free liquid.

(f) DEFINITIONS.—As used in this section—

(1) LANDFILL GAS OPERATION.—The term "landfill gas operation" means, the installation or operation of a system for the recovery or processing of methane from a landfill (including, but not limited to, recirculation to the landfill of condensate consisting of water and other liquids removed from the gas recovered from the landfill).

(2) LANDFILL GAS OPERATOR.—The term "landfill gas operator" means with respect to a release or threat of release from any facility, any person to the extent he is involved in landfill gas operation.

SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

(a) REVISION OF HRS.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priority List (NPL) and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the Administrator shall revise the hazard ranking system with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the Administrator may not include on the NPL any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the Administrator's authority to include any such facility on the NPL based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.

SEC. 126. RELEASES ASSOCIATED WITH BRINE DISPOSAL.

(a) REVIEW.—The Administrator shall conduct a review of State programs to protect public health and the environment in States in which annular injection of brines associated with oil and gas production is permitted. The review shall only be conducted in the case

of States in which there are more than 2500 active wells at which annular injection is used as of the date of enactment of this section.

(b) Enforcement.—

(1) Determination.—If the Administrator determines, on the basis of the review conducted under subsection (a), that any State subject to such review is not adequately enforcing a State program to assure that public health or the environment will not be endangered by releases into the environment associated with the annular injection or surface disposal of such brines, the Administrator shall after notice to the State take or order such enforcement or corrective action in such State as may be necessary to assure protection of public health or the environment from endangerment by releases into the environment associated with such injection or other disposal practices.

(2) The Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any enforcement or corrective action taken or ordered under paragraph (1) in any State referred to in subsection (a). The court may enter such judgment as protection of the public health or the environment may require, including the imposition of a civil penalty not to exceed $5,000 for each day of violation of any enforcement or corrective action taken or ordered by the Administrator.

(c) Deadlines.—The review required under subsection (a) shall be completed, and any enforcement or corrective action taken or ordered under subsection (b) commenced, no later than 18 months after the date of enactment of this section.

(d) Definition.—For purposes of this section, the term "annular injection" means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

SEC. 127. INDIAN TRIBES.

(a) Definition.—As used in this Act, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term does not include any Alaska Native regional or village corporation.

(b) Future Maintenance and Cost-Sharing Requirements.—The requirements of section 104(c)(3) of this Act for assurances regarding future maintenance and cost-sharing shall not apply to remedial action to be taken on any of the following:

(1) Land or water held by an Indian tribe.

(2) Land or water held by the United States in trust for Indians.

(3) Land or water held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation).

(4) Land or water otherwise within the borders of an Indian reservation.

In the case of remedial action to be taken on any such land or water, the Secretary of the Interior shall provide the assurance re-

quired by section 104(c)(3) regarding the availability of a hazardous waste disposal facility.

(c) Contracts or Cooperative Agreements.—

(1) Authority.—If the Administrator determines that an Indian tribe has the capability to carry out any or all of the actions authorized in this section, the Administrator may, in his discretion, enter into a contract or cooperative agreement with such an Indian tribe to take such actions in accordance with criteria and priorities established pursuant to section 105(a)(8) and to be reimbursed for the reasonable response costs thereof from the Fund.

(2) Enforcement.—If the President enters into a contract or cooperative agreement pursuant to this subsection, and the Indian tribe thereof fails to comply with any requirements of the contract, the Administrator may, after providing 60 days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the Indian tribe.

(d) Natural Resources Liability.—

(1) Liabliity to tribe.—Liability under section 107(a)(4)(C) shall be to the Indian tribe in the case of an injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to the tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Exemptions.—No liability to an Indian tribe shall be imposed under section 107(a)(4)(C), where the party sought to be charged has demonstrated each of the following—

(A) The damages to natural resources complained of were specifically identifed as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environment analysis.

(B) A decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. In the case of damages occurring pursuant to a Federal permit or license this subparagraph applies only so long as the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe.

(3) Recovery.—The Secretary of the Interior, or the authorized representative of any Indian tribe, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be availale for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources. There shall be no recovery under the authority of section 107(a)(4)(C) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

(e) Delegation.—The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of an Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d).

(f) Application of Other Provisions.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 116 (regarding health assessments and protection) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the national priority list).

TITLE II—HAZARDOUS SUBSTANCE RESPONSE REVENUE ACT OF 1980

SEC. 201. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) Short Title.—This title may be cited as the "Hazardous Substance Response Revenue Act of 1980".

(b) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provisions, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

* * * * * * *

Subtitle B—Establishment of Hazardous Substance Response Trust Fund

SEC. 221. ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous [Substance Response Trust Fund] *Substances Superfund*" (hereinafter in this subtitle referred to as the "Response Trust Fund"), consisting of such amounts as may be appropriated or transferred to such Trust Fund as provided in this section.

* * * * * * *

[(c) Expenditures From Response Trust Fund.—

[(1) In general.—Amounts in the Response Trust Fund shall be available in connection with releases or threats of releases of hazardous substances into the environment only for purposes of making expenditures which are described in section 111 (other than subsection (j) thereof) of this Act, as in effect on the date of the enactment of this Act, including—

[(A) response costs,

[(B) claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act, [(C) claims for injury to, or destruction or loss of, natural resources, and

[(D) related costs described in section 111(c) of this Act.

[(2) Limitations on expenditures.—At least 85 percent of the amounts appropriated to the Response Trust Fund under subsection (b)(1)(A) an (2) shall be reserved—

[(A) for the purposes specified in paragraphs (1), (2), and (4) of section 111(a) of this Act, and

[(B) for the repayment of advances made under section 223(c), other than advances subject to the limitation of section 223(c)(2)(C).]

(C) Expenditures From Trust Fund.—Amounts in the Response Trust Fund shall be available for expenditure only as provided in section 111 of title I of this Act.

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Subtitle C—Post-Closure Tax and Trust Fund

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SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

[(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

[(b) Expenditures From Post-closure Liability Trust Fund.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

[(c) Administrative Provisions.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.]

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

Sec. 301. (a) The [President] *Administrator* shall submit to the Congress within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

(A) the extent to which the Act and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this Act;

(F) the impact of the taxes imposed by title II of this Act on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection the [President] *Administrator* shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility, provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report of the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) The [President] *Administrator* shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The [President] *Administrator* shall submit the results of his study, together with his recommendations, within two years of the date of enactment of this Act, and shall submit an interim report on his study within one year of the date of enactment of this Act.

(c)(1) The [President,] *Administrator,* acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternate protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct or indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of the date of enactment of this Act on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e)(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environmental caused by the release of hazardous substances into the envirnoment, there shall be submitted to the Congress a study within twelve months of enactment of this Act.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available by pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed $300,000.

(f) The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and not later than two years after the enactment of this Act, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability Study.—

(1) Study group.—The Administrator shall appoint a study group to carry out a study under this subsection. The study group shall be comprised of the following:

(A) 2 representatives of the Administrator.

(B) 4 representatives of persons described in paragraph (2).

(C) 2 representatives of groups of organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances.

(D) 3 representatives of propoerty and casualty insurers.

(E) 1 representative of reinsurers.

A representative of the Administrator shall be the chairperson of the study group. One reporter shall be elected from among the members of the study group.

(2) Study.—The study group shall undertake a study to determine the insurability of the liability of the following:

(A) Persons who generate hazardous substances: liability for costs under this Act.

(B) Persons who own or operate facilities: liability for costs under this Act.

(C) Persons liable for harm to persons or property caused by the release of hazardous substances into the environment.

(3) Item evaluated.—As part of their study in accordance with this section, the study group shall evaluate, among other matters, the following—

(A) current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of persons upon whom is imposing under this Act on the underwriting and pricing of insurance coverage.

(E) Current trends in judicial interpretation and construction of applicable insurance contracts.

(F) The frequency and severity of a representative sample of claims closed during the calendar year preceding enactment of this subsection.

(G) Other impediments to insurability.

(4) Submission.—The report shall be submitted to the Congress with appropriate recommendations, within 18 months after the enactment of the Superfund Amendments of 1985.

EFFECTIVE DATES, SAVINGS PROVISION

Sec. 302. (a) Unless otherwise provided, all provisions of this Act shall be effective on the date of enactment of this Act.

(b) Any regulation issued pursuant to any provisions of section 311 of the Clean Water Act which is repealed or superseded by this Act and which is in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

(1) respecting financial responsibility,

(2) issued pursuant to any provision of law repealed or superseded by this Act, and

(3) in effect on the date immediately preceding the effective date of this Act shall be deemed to be a regulation issued pursuant to the authority of this Act and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this Act shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

[EXPIRATION, SUNSET PROVISION

[Sec. 303. Unless reauthorized by the Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1985, or when the sum of the amounts received in the Treasury under section 4611 and under 4661 of the Internal Revenue Code of 1954 total $1,380,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $1,380,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under sections 4611 and 4661 of the Internal Revenue Code of 1954.]

CONFORMING AMENDMENTS

Sec. 304. (a) Subsection (b) of section 504 of the Federal Water Pollution Control Act is hereby repealed.

(b) One-half of the unobligated balance remaining before the date of the enactment of this Act under subsection (k) of section 311 of the Federal Water Pollution Control Act and all sums appropriated under section 504(b) of the Federal Water Pollution Control Act shall be transferred to the Fund established under title II of this Act.

(c) In any case in which any provisions of section 311 of the Federal Water Pollution Control Act is determined to be in conflict with any provisions of this Act, the provisions of this Act shall apply.

LEGISLATIVE VETO

SEC. 305. (a) Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of title I of this Act, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the   dealing with the matter of   , which rule or regulation was transmitted to Congress on   .", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

TRANSPORTATION

SEC. 306. (a) Each hazardous substance which is listed *and regulated* or designated as provided in section 101(14) of this Act shall, within ninety days after the date of enactment of this Act or at the time of such listing or designation, whichever is later, be listed *and regulated* as a hazardous material under the Hazardous Materials Transportation Act.

(b) A common or contract carrier shall be liable under other law in lieu of section 107 of this Act for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing of such substance as a hazardous material under the Hazardous Materials Transportation Act, or for substances listed *and regulated* pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(c) Section 11901 of title 49, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i);

(2) by inserting "and subsection (h)" after "subsection (g)" in subsection (i)(2) as so redesignated by paragraph (1) of this subsection; and

(3) by inserting the following new subsection (h):

"(h) A person subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person, and who is required to comply with section 10921 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall, in any action brought by the Commission, be liable to the United States for a civil penalty not to exceed $20,000 for each violation."

ASSISTANT ADMINISTRATOR FOR SOLID WASTE

SEC. 307. (a) Section 2001 of the Solid Waste Disposal Act is amended by striking out "a Deputy Assistant" and inserting in lieu thereof "an Assistant".

(b) The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act, shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5, United States Code.

(c) The amendment made by subsection (a) shall become effective ninety days after the date of the enactment of this Act.

SEPARABILITY

SEC. 308. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this Act shall be affected thereby.

SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCES CASES.—

(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the Federally required commencement date, such period shall commence at the Federally required commencement date in lieu of the date specified in such State statute.

(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

(b) DEFINITIONS.—As used in this section—

(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

(2) APPLICABLE LIMITATIONS PERIOD.—The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

(3) COMMENCEMENT DATE.—The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "Federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury referred to in subsection (a)(1) was caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term "Federally required commencement

date" means the later of the date referred to in subparagraph (A) or the following—

(i) In the case of a minor, the date on which the minor reaches the age of majority as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(c) Effective Date.—This section shall take effect with respect to actions brought after December 11, 1980.

SEC. 310. CITIZENS SUITS.

(a) Authority To Bring Civil Actions.—Except as provided in subsection (d) or (e) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement which has become effective pursuant to this Act; or

(2) against—

(A) the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator; or

(B) any other department, agency, or instrumentality of the United States where there is alleged failure of such department, agency, or instrumentality to perform any act or duty under section 119 of this Act (relating to Federal facilities) which is not discretionary with such department, agency, or instrumentality.

(b) Venue.—

(1) Actions under subsection (a)(1).—Any action under paragraph (1) of subsection (a) shall be brought in the district court for the district in which the alleged violation occurred.

(2) Action under subsection (a)(2).—Any action brought under paragraph (2) of subsection (a) may be brought in the United States District Court for the District of Columbia.

(c) Relief.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the Administrator or other department, agency, or instrumentality to perform the act or duty concerned.

(d) Subsection (a)(1) Actions.—

(1) Notice.—No action may be commenced under subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice of the violation or disposal—

(A) to the Administrator;

(B) to the State in which the alleged violation occurs; and

(C) to any alleged violator.

Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) ACTIONS UNDER PARAGRAPH (1).—No action may be commenced under subsection (a)(1) with respect to any violation referred to in such subparagraph if the Administrator has commenced and is diligently pursuing an action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of such requirement.

(e) SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) prior to 60 days after the plaintiff has given notice to the Administrator or other department, agency, or instrumentality that he will commence such action. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this Act shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any standard or requirement relating to hazardous substances, or pollutants or contaminants, or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—In any action under this section the United States, if not a party, may intervene as a matter of right.

(i) DEFINITIONS.—The terms used in this section shall have the same meaning as when used in title I.

TITLE IV—POLLUTION INSURANCE

SEC. 401. DEFINITIONS.

As used in this title—

(1) INSURANCE.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) POLLUTION LIABILITY.—The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) RISK RETENTION GROUP.—The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any States; and

(D) which does not exclude any person from membership in the group solely to private for members of such a group a competitive advantage over such a person.

(4) PURCHASING GROUPS.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) STATE.—The term "State" means any State of the United States or the District of Columbia.

SEC. 402. STATE LAWS.

Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

SEC. 403. RISK RETENTION GROUPS.

(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from any State law, rule, or order described in paragraph (1) through (4)—

(1) A law, rule, or order which make unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State.

(4) A law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) EXCEPTIONS.—

(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following—

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of

pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process. Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(F) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(G) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F).

(c) Application of Exemptions.—The exemptions specified in subsection (a) apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(c) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker from a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 404. PURCHASING GROUPS.

(a) Exemption.—Except as provided in this section, a purchasing group is exempt from any State law, rule, or order described in paragraphs (1) through (8)—

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other

persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

(b) Application of Exemptions.—The exemptions specified in subsection (a) apply to the following—

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group—

(A) Pollution liability insurance, and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

SEC. 405. APPLICABILITY OF SECURITIES LAWS.

(a) Ownership Interests.—The ownership interests of members of a risk retention group shall be considered to be—

(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(b) Investment Company Act.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) Blue Sky Law.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

Section 9003. of the Solid Waste Disposal Act

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Subtitle I—Regulation of Underground Storage Tanks

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RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS

Sec. 9003. (a) * * *

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(h) EPA Response Program for Petroleum.—

(1) Before (c)(4) regulations.—Before the effective date of corrective action regulations under subsection (c)(4), the Administrator is authorized to—

(A) undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B) into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator, to protect human health and the environment; or

(B) require the owner or operator of the underground storage tank to undertake such corrective action with respect to any such release unless the Administrator determines that such action will not be carried out properly by such owner or operator.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. In undertaking or requiring such corrective action, the Administrator shall take into account the distinctions referred to in subsection (b). The Administrator shall use funds in the Petroleum Release Response Account of the Hazardous Substances Superfund for payment of costs incurred for corrective action under subparagraph (A). The Administrator may issue an order to require the owner or operator of an underground storage tank to comply with subparagraph (B). Any violation of such an order shall be enforced in the same manner as provided in the case of an order under section 9006.

(2) After (c)(4) regulations.—Following the effective date of regulations under subsection (c)(4), all actions of the Administrator (or ordered by the Administrator) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date the Administrator may undertake corrective action with respect to any release of petroleum (as described in section 9001(2)(B)) into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator, to protect

human health and the environment and one or more of the following situations exists—

(A) No person can be found who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator under this paragraph to protect human health and the environment.

(C) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under section 9006 to comply with the corrective action regulations.

(3) RECOVERY OF COSTS.—

(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (4), for undertaking corrective action with respect to the release of petroleum from an underground storage tank, the owner and operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(B) INTERIM LIMIT ON LIABILITY.—(i) Until a determination is made under subparagraph (C), the maximum liability under this paragraph shall be $3,000,000 for each corrective action undertaken at a facility at which a release of petroleum from an underground storage tank occurs.

(ii) In additional corrective action is required to respond to a release of petroleum from an underground storage tank which occurs after completion of prior corrective action in response to an earlier release, the maximum liability under this paragraph shall be $3,000,000 for such subsequent corrective action.

(iii) The limitation on liability under this subparagraph shall apply only with respect to liability under this paragraph for costs incurred by the Administrator or a State for undertaking corrective action with respect to the release of petroleum from an underground storage tank. Such limitation shall not affect the liability of any person under any other authority of law for any other costs or damages.

(C) PERMANENT REGULATIONS.—At the time financial responsibility regulations are promulgated by the Administrator under this section, the Administrator shall determine whether limitations on the liability imposed under subparagraph (A) are appropriate. If the Administrator determines that such limitations are appropriate, he may promulgate regulations establishing limits on such liability applicable to various categories of owners and operators and adjusting the $3,000,000 limitation established under subparagraph (B). Such regulations shall take into consideration the following factors—

(i) The volume of petroleum handled at the types of facilities involved.

(ii) The effect of liability under this section on the small business segment of the petroleum marketing industry.

(iii) The results of studies and actions undertaken in accordance with subsection (d).

(iv) Such other factors as the Administrator may deem pertinent.

(D) LIMITATIONS INAPPLICABLE.—Notwithstanding the limitations on liability contained in paragraph (B) of this subsection, the liability of a person under this subsection shall be the full and total costs incurred by the Administrator or the State in undertaking corrective action in either of the following circumstances—

(i) Where the release or threat of release was the result of willful misconduct or gross negligence within the privity or knowledge of such person.

(ii) Where the person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with corrective action activities under this Act.

(E) CONTRACTS, ETC. NOT AFFECTED.—Nothing in this subsection shall be deemed to affect or modify in any way, contracts or other agreements between owners, operators, or third parties, or the responsibilities of these parties as defined in regulations promulgated under section 9003 of this Act.

(F) FACILITY.—For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owners or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(4) CORRECTIVE ACTION.—The corrective action undertaken by the Administrator under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may also determine the health effects of the release concerned. The costs of such study shall not be treated as corrective action for purposes of paragraph (4), relating to cost recovery.

(5) STATE AUTHORITIES.—Whenever a State has primary enforcement responsibility under section 9004, the State may submit to the Administrator a proposal to exercise the authorities of the Administrator under paragraphs (1), (2), and (3) of this subsection. If the Administrator determines that such State has demonstrated the ability to exercise and enforce such authorities in a manner substantially equivalent to the Federal program under this subsection, the Administrator may delegate such authorities to the State. For purposes of funding corrective actions undertaken by a State pursuant to such delegated authorities, the Administrator may make grants to the State from the Petroleum Release Account of the Hazardous Substance Re-

sponse Trust Fund. Such grants shall be apportioned among the States applying for grants based upon the number of underground storage tanks located in the respective States determined on the basis of information available to the Administrator under this subtitle.

(6) Definition of owner.—As used in this subsection the term "owner" shall not include any mortgagee or other person who owns a security interest in the tank or who has acquired title to the tank by reason of a mortgage or other security interest.

Internal Revenue Code of 1954

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CHAPTER 38—ENVIRONMENTAL TAXES

SUBCHAPTER A. Tax on petroleum.
SUBCHAPTER B. Tax on certain chemicals.
[SUBCHAPTER C. Tax on hazardous waste.]

Subchapter A—Tax on Petroleum

Sec. 4611. Imposition of tax.
Sec. 4612. Definitions and special rules.

SEC. 4611 IMPOSITION OF TAX.

(a) General Rule.— * * *

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(d) Termination.—The taxes imposed by this section shall not apply after September 30, [1985] *1990,* except that if on September 30, [1983] *1988,* or September 30, [1984] *1989—*

(1) the unobligated balanced in the Hazardous Substance Response Trust Fund as of such date exceeds [$900,000,000] *$4,900,000,000* and

(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed [$500,000,000] *$2,700,000,000* on September 30 of the following year if no tax is imposed under section 4611 or 4661 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after the date referred to in paragraph (1).

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[Subchapter B—Tax on Certain Chemicals

[Sec. 4661. Imposition of tax.
[Sec. 4662. Definition and special rules.

[SEC. 4661. IMPOSITION OF TAX.

[(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

[(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	The tax is the following amount per ton
Acetylene	$4.87
Benzene	4.87
Butane	4.87
Butylene	4.87
Butadiene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromium	4.45
Chromite	1.52
Potassium dichromate	1.69
Sodium dichromate	1.87
Cobalt	4.45
Cupric sulfate	1.87
Cupric oxide	3.59
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Phosphorus	4.45
Stannous chloride	2.85
Stannic chloride	2.12
Zinc chloride	2.22
Zinc sulfate	1.90
Potassium hydroxide	0.22
Sodium hydroxide	0.28
Sulfuric acid	0.26
Nitric acid	0.24

(c) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

[SEC. 4662. DEFINITIONS AND SPECIAL RULES.

[(a) DEFINITIONS.—For purposes of this subchapter—

[(1) TAXABLE CHEMICAL.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

[(A) which is listed in the table under section 4661(b), and

[(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

[(2) UNITED STATES.—The term "United States" has the meaning given such term by section 4612(a)(4).

[(3) IMPORTER.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

[(4) TON.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of 2,000 pounds on a molecular weight basis.

[(5) FRACTIONAL PART OF TON.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

[(b) EXCEPTIONS: OTHER SPECIAL RULES.—For purposes of this subchapter—

[(1) METHANE OR BUTANE USED AS A FUEL.—Under regulatons prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

[(2) SUBSTANCES USED IN THE PRODUCTION OF FERTILIZER.—

[(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

[(B) QUALIFIED FERTILIZER SUBSTANCE.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

[(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

[(ii) sold for use by any purchaser in a qualified fertilizer use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

[(C) QUALIFIED FERTILIZER USE.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

[(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(3) SULFURIC ACID PRODUCED AS A BYPRODUCT OF AIR POLLUTION CONTROL.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

[(4) SUBSTANCES DERIVED FROM COAL.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

[(5) SUBSTANCES USED IN THE PRODUCTION OF MOTOR FUEL, ETC.—

[(A) In general.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

[(B) Qualified fuel substance.—For purposes of this section, the term "qualified fuel substance" means any substance—

[(i) used in a qualified fuel use by the manufacturer, producer, or importer,

[(ii) sold for use by any purchaser in a qualified fuel use, or

[(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

[(C) Qualified fuel use.—For purposes of this subsection, the term "qualified fuel use" means—

[(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

[(ii) any use as such a fuel.

[(D) Chemicals to which paragraph applies.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

[(E) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[(6) Substance having transitory presence during refining process, etc.—

[(A) In general.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

[(B) Chemicals to which subparagraph (A) applies.—The chemicals described in this subparagraph are—

[(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

[(ii) any solution or mixture containing any chemical described in clause (i).

[(C) Removal treated as use.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

[(c) Use by Manufacturer, Etc., Considered Sale.—Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

[(d) Refund or Credit for Certain Uses.—

[(1) In general.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any taxable chemical, and

[(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any case to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substance manufactured or produced.

[(2) Use as fertilizer.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

[(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(3) Use as qualified fuel.—Under regulations prescribed by the Secretary, if—

[(A) a tax under section 4661 was paid with respect to any chemical discribed in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

[(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

[(e) Disposition of Revenues From Puerto Rico and the Virgin Islands.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.]

Subchapter B—Tax on Certain Chemicals

Sec. 4661. Imposition to tax.
Sec. 4662. Definitions and special rules.

SEC. 4661. IMPOSITION OF TAX.

(a) General Rule.—There is hereby imposed a tax on any taxable chemical sold by the manufacturer, producer, or importer thereof.

(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

In the case of:	*The tax is the following amount per ton:*
Acetylene	*$4.87*
Benzene	*4.87*
Butane	*4.87*
Butylene	*4.87*
Butadiene	*4.87*
Ethylene	*4.87*
Methane	*3.44*
Naphthalene	*4.87*
Propylene	*4.87*
Toluene	*4.87*
Xylene	*4.87*
Ammonia	*2.64*
Antimony	*4.45*
Antimony trioxide	*3.75*
Arsenic	*4.45*
Arsenic trioxide	*3.41*
Barium sulfide	*2.30*
Bromine	*4.45*
Cadmium	*4.45*
Chlorine	*2.70*
Chromium	*4.45*
Chromite	*1.52*
Potassium dichromate	*1.69*
Sodium dichromate	*1.87*
Cobalt	*4.45*
Cupric sulfate	*1.87*
Cupric oxide	*3.59*
Cuprous oxide	*3.97*
Hydrochloric acid	*0.29*
Hydrogen fluoride	*4.23*
Lead oxide	*4.14*
Mercury	*4.45*
Nickel	*4.45*
Phosphorus	*4.45*
Stannous chloride	*2.85*
Stannic chloride	*2.12*
Zinc chloride	*2.22*
Zinc sulfate	*1.90*
Potassium hydroxide	*0.22*
Sodium hydroxide	*0.28*
Sulfuric acid	*0.26*
Nitric acid	*0.24*

(c) Termination.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

SEC. 4662. DEFINITIONS AND SPECIAL RULES.

(a) Definitions.—For purposes of this subchapter—

(1) Taxable chemical.—Except as provided in subsection (b), the term "taxable chemical" means any substance—

(A) which is listed in the table under section 4661(b), and

(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

(2) United states.—The term "United States" has the meaning given such term by section 4612(a)(4).

(3) Importer.—The term "importer" means the person entering the taxable chemical for consumption, use, or warehousing.

(4) Ton.—The term "ton" means 2,000 pounds. In the case of any taxable chemical which is a gas, the term "ton" means the amount of such gas in cubic feet which is the equivalent of $2,000 pounds on a molecular weight basis.

(5) Fractional part of ton.—In the case of a fraction of a ton, the tax imposed by section 4661 shall be the same fraction of the amount of such tax imposed on a whole ton.

(b) Exceptions; Other Special Rules.—For purposes of this subchapter—

(1) Methane or butane used as a fuel.—Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture, or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4611(a), the person so using it shall be treated as the manufacturer thereof).

(2) Substances used in the production of fertilizer.—

(A) In general.—In the case of a nitric acide, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) Qualified fertilizer substance.—For purposes of this section, the term "qualified fertilizer substance" means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) Qualified fertilizer use.—The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(3) Sulfuric acid produced as a byproduct of air pollution control.—In the case of sulfuric acid produced solely as a byproduct of and on the same site as air pollution control equipment, no tax shall be imposed under section 4661.

(4) Substances derived from coal.—For purposes of this subchapter, the term "taxable chemical" shall not include any substance to the extent derived from coal.

(5) Substances used in the production of motor fuel, etc.—

(A) In general.—In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) Qualified fuel substance.—For purposes of this section, the term "qualified fuel substance" means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) QUALIFIED FUEL USE.—For purposes of this subsection, the term "qualified fuel use" means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use s such a fuel.

(D) CHEMICALS TO WHICH PARAGRAPH APPLIES.—For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) SUBSTANCE HAVING TRANSITORY PRESENCE DURING REFINING PROCESS, ETC.—

(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) CHEMICALS TO WHICH SUBPARAGRAPH (A) APPLIES.—The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) REMOVAL TREATED AS USE.—Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(7) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

(A) IN GENERAL.—In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, which is a qualified animal feed substance, not tax shall be imposed under section 4661(a).

(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term "qualified animal feed substance" means any substance—

(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified animal feed use, or

(iii) sole for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

(C) Qualified animal feed use.—The term "qualified animal feed use" means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

(D) Taxation of nonqualified sale or use.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(c) Use of Manufacturer, Etc., Considered Sale.—Except as provided in subsection (b), if any person manufacturers, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(d) Refund or Credit for Certain Uses.—

(1) In general.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any taxable chemical, and

(B) such chemical was used by any person in the manufacture or production of any other substance the sale of which by such person would be taxable under such section,

then an amount equal to the tax so paid shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by such section. In any cases to which this paragraph applies, the amount of any such credit or refund shall not exceed the amount of tax imposed by such section on the other substances manufactured or produced.

(2) Use as fertilizer.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to make ammonia without regard to subsection (b)(2), and

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit of refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) Use as qualified fuel.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the *same manner as if it were an overpayment of tax imposed by this section.*

(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(7), and

(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(7) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(e) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4661.

[Subchapter C—Tax on Hazardous Wastes

[Sec. 4681. Imposition of tax.
[Sec. 4682. Definitions and special rules.

[SEC. 4681. IMPOSITION OF TAX.

[(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

[(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

[SEC. 4682. DEFINITIONS AND SPECIAL RULES.

[(a) DEFINITIONS.—For purposes of this subchapter—

[(1) HAZARDOUS WASTE.—The term "hazardous waste" means any waste—

[(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

[(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

[(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term "qualified hazardous waste disposal facility" means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

[(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

[(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

[(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.]

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33 U.S.C. 1415(g)(5)

(5) [The injunctive relief provided by this subsection shall not] *Nothing in this Act, including the injunctive relief provided by this subsection, shall* restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

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31 U.S.C. 9101(3)

(3) "wholly owned Government corporation" means—

(A) the Commodity Credit Corporation.

(B) the Export-Import Bank of the United States.

(C) the Federal Crop Insurance Corporation.

(D) Federal Prison Industries, Incorporated.

(E) the Federal Savings and Loan Insurance Corporation.

(F) the Government National Mortgage Association.

(G) the Overseas Private Investment Corporation.

(H) the Pennsylvania Avenue Development Corporation.

(I) the Pension Benefit Guaranty Corporation.

(J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(K) the Saint Lawrence Seaway Development Corporation.

(L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

(M) the Tennessee Valley Authority.

(N) the Marine Oil Pollution Insurance Corporation.

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33 U.S.C. 1486

§ 1486. Revolving fund for Federal actions and activities

[The revolving fund established under section 1321(k) of this title shall be available to the Secretary for Federal actions and activities under section 1474 of this title.]

The Marine Oil Pollution Compensation Fund established under title II of the Comprehensive Oil Pollution Liability and Compensation Act shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 501 of that Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

33 U.S.C. 1321

§ 1321. Oil and hazardous substance liability

DEFINITIONS

(a) For the purpose of this section, the term—

* * * * * * *

(17) "Otherwise subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement which the United States is a party**[**.**]***;*
(18) "person in charge" means the individual immediately responsible for the operation of a vessel or facility.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies

* * * * * * *

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person *or his employer* in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, **[**or person in charge**]** *person in charge, or employer of such person in charge* of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, **[**or person in charge**]** *person in charge, or employer of such person in charge* of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, **[**or person in charge**]** *person in charge, or employer of such person in charge* of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless [the owner or operator] *whoever being* charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46 of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, [or person in charge] *person in charge, or employer of such person in charge,* such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

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REMOVAL OF DISCHARGED OIL OR HAZARDOUS SUBSTANCES; NATIONAL CONTINGENCY PLAN

(c)(1) * * *

(2) Within sixty days after October 18, 1972, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and remov-

al of oil and hazardous substances, and shall include, but not be limited to—

* * * * * * *

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed [from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.], *in the case of any discharge of oil from a vessel or facility, for the reasonable cost incurred in such removal from the Marine Oil Pollution Compensation Fund.* The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

MARITIME DISASTER DISCHARGE

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. [Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.]

* * * * * * *

RECOVERY OF REMOVAL COSTS

(i)[(1)] In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substances is discharged in violation of subsection (b)(3) of this section acts to remove such oil substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Claims Court, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

[(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

[(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid for the funds established pursuant to subsection (k) of this section.]

* * * * * * *

[AUTHORIZATION OF APPROPRIATIONS; SUPPLEMENTAL APPROPRIATIONS

[(k)(1) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (*l*) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

[(2) The Secretary of Transportation shall notify the Congress whenever the unobligated balance of the fund is less than $12,000,000, and shall include in such notification a recommendation for a supplemental appropriations relating to the sums that are needed to maintain the fund at the level provided in paragraph (1).]

ADMINISTRATION

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. [Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.] Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

* * * * * * *

[FINANCIAL RESPONSIBILITY

[(p)(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibilty of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

[(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after October 18, 1972, with respect to hazardous substances. The President shall delegate the resposibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after October 18, 1972. Regulations necessary to implement this subsection shall be issued within six months after October 18, 1972.

[(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

[(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

[(5) The Secretary of the Treasury may refuse the clearance required by section 91 of Title 46 to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

[(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.]

* * * * * * *

LIABILITY LIMITATIONS NOT TO LIMIT LIABILITY UNDER OTHER LEGISLATION

(r) Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

(s) The Marine Oil Pollution Compensation Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Marine Pollution Compensation Fund.

33 U.S.C. 1503(c)

CONDITIONS FOR ISSUANCE

(c) The Secretary may issue a license in accordance with the provisions of this chapter if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 1517 (*l*) of this title] *section 505 of the Comprehensive Oil Pollution Liability and Compensation Act*;

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33 U.S.C. 1517

§ 1517. Liability

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[OIL DISCHARGE; NOTIFICATION; PENALTY; USE OF NOTIFICATION IN CRIMINAL CASES LIMITED

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

OIL REMOVAL; DRAWING UPON FUND MONEY FOR CLEANUP COSTS

[(c)] *(b)* (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 1321(c)(2) of this title.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursu-

ant to subsection (f) of this section.] *Marine Oil Pollution Compensation Fund.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[JOINT AND SEVERAL LIABILITY OF OWNERS AND OPERATORS; LIMITATION OF LIABILITY; FULL AMOUNT OF LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port while located in the safety zone, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[LIABILITY OF LICENSEES; LIMITATION OF LIABILITY; FULL AMOUNT OF LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[DEEPWATER PORT LIABILITY FUND; ESTABLISHMENT; SUITS; ADMINISTRATION; LIABILITY FOR UNCOMPENSATED CLEANUP COSTS AND DAMAGES; FEES AND EXEMPTIONS; MAINTENANCE OF PRESCRIBED AMOUNT OF MONEY; LOANS FROM TREASURY FOR PAYMENT OF CLAIMS, INTEREST; APPROPRIATION FOR ADMINISTRATION COSTS; INCOME FROM INVESTMENTS TO PRINCIPAL OF FUND

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. These collections shall cease after September 25, 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended. Whenever the money in the Fund is less than the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed to draw upon under subsection (c)(3) of this section or for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[DEFENSES; ACT OF WAR; NEGLIGENCE OF FEDERAL GOVERNMENT; NEGLIGENCE OF CLAIMANT

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[SUBROGATION; JOINT AND SEVERAL LIABILITY; THIRD PARTY LIABILITY; RECOVERY OF REASONABLE CLEANUP COST OF DISCHARGE CAUSED BY ACT OF WAR OR NEGLIGENCE OF FEDERAL GOVERNMENT

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator. In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person. When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[CLASS ACTIONS: ATTORNEY GENERAL, MEMBER OF GROUP; NOTICE, PUBLICATION IN FEDERAL REGISTER AND NEWSPAPERS; TRUSTEE'S ACTION FOR DAMAGES TO NATURAL RESOURCES OF MARINE ENVIRONMENT; RESTORATION AND REHABILITATION OF SUCH RESOURCES

[(i)(1) The Attorney General may act on behalf on any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c))2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

[PROCEDURES FOR FILING AND PAYMENT OF CLAIMS FOR CLEANUP COSTS AND DAMAGES; LIMITATIONS; APPEALS

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this chapter.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.]

FEDERAL PREEMPTION UNINTENDED; ADDITIONAL STATE REQUIREMENTS OR LIABILITY; BAR AGAINST MULTIPLE RECOVERIES

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[FINANCIAL RESPONSIBILITY

[(*l*) The Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

DEFINITIONS

[(m)] *(d)* As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate

damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by an person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[STUDY FOR UNIFORM LAW FOR CLEANUP COSTS AND DAMAGES FROM OIL SPILLS; ADJUDICATION AND SETTLEMENT OF CLAIMS; REPORT TO CONGRESS

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after January 3, 1975.]

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43 U.S.C. 1653(b) and (c)

CONTROL AND REMOVAL OF POLLUTANTS AT EXPENSE OF RIGHT-OF-WAY HOLDER

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this chapter is polluted by any activities *related to the trans-Alaska oil pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil* *pollution as that term is defined in section 501 of the Comprehensive Oil Pollution Liability and Compensation Act.*

[DISCHARGES OF OIL FROM VESSELS LOADED AT TERMINAL FACILITIES OF PIPELINE; STRICT LIABILITY; LIMITATION ON LIABILITY; APPORTIONMENT OF LIABILITY; ESTABLISHMENT AND OPERATION OF TRANS-ALASKA PIPELINE LIABILITY FUND

[(c)(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

Public Law 95–372, Title III

[TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

[DEFINITIONS

[SEC. 301. For the purposes of this title, the term—

[(1) "Secretary" means the Secretary of Transportation;

[(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

[(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

[(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

[(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), and which is transporting oil directly from an offshore facility;

[(6) "public vessel" means a vessel which—

[(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

[(B) is not engaged in commercial service;

[(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

[(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in Section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

[(9) "oil pollution" means—

[(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

[(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

[(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or [(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

[(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

[(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

[(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

[(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

[(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

[(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

[(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel except that such term does not include cleanup costs:

[(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

[(17) "claim" means a demand in writing for a sum certain;

[(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or damaging;

[(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease. permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

[(20) "operator" means—

[(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

[(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

[(21) "property" means littoral, riparian, or marine property;

[(22) "removal costs" means—

[(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

[(B) cleanup costs, other than the costs described in subparagraph (A);

[(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

[(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

[(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

[FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

[SEC. 302. (a) There is hereby established in the Treasury of the United States on Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

[(b) The Fund shall be composed of—

[(1) all fees collected pursuant to subsection (d) of this section; and

[(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

[(c) The Fund shall be immediately available for—

[(1) removal costs described in section 301 (22);

[(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

[(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

[(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

[(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

[(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

[(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

[(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

[(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

[(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

[(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemption, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

[DAMAGES AND CLAIMANTS

[SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

[(1) removal costs; and

[(2) damages, including—

[(A) injury to, or destruction of, real or personal property;

[(B) loss of use of real or personal property;

[(C) injury to, or destruction of, natural resources;

[(D) loss of use of natural resources;

[(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

[(F) loss of tax revenue for a period of one year due to injury to real or personal property.

[(b) A claim authorized by subsection (a) of this section may be asserted—

[(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

[(A) that he is entitled to a defense to liability under section 304(c)(1) or 304(c)(2) of this title; or

[(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

[(2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

[(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercise; exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

[(4) under paragraph (2)(E), or by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

[(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

[(6) under paragraphs (2) (A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

[(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

[(B) the claimant is not otherwise compensated for his loss;

[(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

[(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consulation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

[(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

[(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

[LIABILITY

[SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

[(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

[(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

[(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

[(c) There shall be no liability under subsection (a) of this section—

[(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

[(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

[(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

[(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

[(f)(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

[(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

[(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

[(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

[(g)(1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

[(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

[(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

[FINANCIAL RESPONSIBILITY

[SEC. 305. (a)(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

[(2) The Secretary, in accordance with regulations promulgated by him, shall—

[(A) deny entry to any port or place in the United States or to the navigable waters to; and

[(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

[(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

[(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or $35,000,000, whichever is less.

[(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

[(d) The President shall conduct a study to determine—

[(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

[(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

[NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

[SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for prejury or for giving a false statement.

[(b)(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

[(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

[(c) In a case where—

[(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

[(2) the source of the discharge was a public vessel; or

[(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

[(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

[CLAIMS SETTLEMENT

[SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

[(b) All claims shall be presented to the Fund—

[(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

[(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

[(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

[(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

[(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

[(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

[(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

[(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

[(1) denies all liability for the claim, for any reason; or

[(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

[(g)(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

[(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

[(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

[(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

[(i)(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

[(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

[(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

[(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

[(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

[(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title, 5, United States Code, in the district courts of the United States.

[(j)(1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

[(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

[(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

[(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

[(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

[(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

[(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

[SUBROGATION

[SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

[(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

[(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

[(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

[(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

[(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant is satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

[(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

[(2) for a claim presented to the Fund pursuant to section 307(c)(2) of this title—

[(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

[(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

[(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

[(i) the amount which the Fund has paid to the claimant, without reduction;

[(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

[(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

[(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

[(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

[JURISDICTION AND VENUE

[SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

[(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[RELATIONSHIP TO OTHER LAW

[SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

[(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

[(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

[PROHIBITION

[SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

[PENALTIES

[SEC. 312. (a)(1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

[(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

[(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

[(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 313. (a) There is authorized to be appropriated for the administration of this title $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

[(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

[(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

[ANNUAL REPORT

[SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

[EFFECTIVE DATES

[SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

[(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.]

SEPARATE AND DISSENTING VIEWS OF THE HONORABLE BARBARA A. MIKULSKI

I support the amendments to the Superfund reauthorization bill—H.R. 2817—made by the House Committee on Merchant Marine and Fisheries. The block of amendments offered by the Chairman on behalf of the leadership of the Committee considerably strengthens the role of the federal agencies that serve as trustees of this Nation's natural resources.

For example, as a result of these amendments, the natural resource trustees will be able to use the Fund to carry out assessments of damages to coastal fisheries caused by the release of hazardous substances such as PCB's. H.R. 2817 as reported by the House Committee on Energy and Commerce would have denied access to the Fund by the trustees for this purpose, yet still require the trustee to carry out such assessments before taking action against parties responsible for the injury to living marine resources. Imposing duties upon an agency while denying the funds to carry out such duties is a self-defeating act, and this Committee has acted wisely to remedy this defect in H.R. 2817.

I also support the other amendments offered by my colleagues on the Committee, and I am particularly grateful to Congressman Studds for agreeing to my request to incorporate an amendment to the oil spill liability fund provisions of the bill reported by this Committee. This amendment establishes the right of states to file their claims for oil spill cleanup costs immediately, rather than to wait six months, and assures the states that their claims will be promptly considered.

However, serious problems remain with this Superfund bill which prompt my dissenting vote. First, this bill lodges too much discretion in the EPA Administrator both to determine the pace of cleanup and to set cleanup standards. Second, this bill limits the rights of states to set public health standards to protect their citizens, and requires the states to bear all the costs of meeting such standards themselves. Third, the bill weakens the legal liability of parties responsible for releasing hazardous substances, and omits a provision in the bill passed by the House during the previous session of Congress allowing private citizens to bring legal actions to compel cleanup. Fourth, the bill contains unwarranted exemptions for special interests and limits their liability in certain circumstances. Lastly, the bill's right-to-know provisions do not require that a private company inform communities of toxic emissions that routinely occur in their environment.

I remain committed to reauthorizing and improving the Superfund program, and I will join with my colleagues to achieve that result. Although I approve and support the amendments to H.R. 2817 made by this Committee, I am unable to support this legislation.

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